SENATE.

THURSDAY, *February 23, 1905.*

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. BURROWS, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. The Journal will stand approved.

CUBAN EXPORT AND IMPORT TRADE.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of Commerce and Labor, transmitting, in response to a resolution of the 20th instant, a statement giving certain information as to the import and export trade, less specie, between the United States and the island of Cuba; which, with the accompanying paper, was referred to the Committee on Relations with Cuba, and ordered to be printed.

RAILWAY MAIL SERVICE.

The PRESIDENT pro tempore laid before the Senate a communication from the Postmaster-General, transmitting, in response to a resolution of the 25th ultimo, a statement from the Auditor for the Post-Office Department giving the amount paid each year to the railway companies for the purpose of carrying the United States mails since 1873, etc.; which, with the accompanying papers, was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the following bills:

S. 4782. An act for the conveyance of public lands belonging to the United States in the State of New York;

S. 6314. An act for the relief of certain receivers of public moneys, acting as special disbursing agents, in the matter of amounts expended by them for per diem fees and mileage of witnesses in hearings, which amounts have not been credited by the accounting officers of the Treasury Department in the settlement of their accounts;

S. 7103. An act confirming the title of the St. Paul, Minneapolis and Manitoba Railway Company to certain lands in the State of Montana, and for other purposes;

S. 7117. An act establishing that portion of the boundary line between the State of South Dakota and the State of Nebraska south of Union County, S. Dak.; and

S. 7157. An act to amend an act to provide for eliminating certain grade crossings on the line of the Baltimore and Potomac Railway Company, in the city of Washington, D. C., and requiring said company to depress and elevate its tracks, and to enable it to relocate parts of its railroad therein, and for other purposes, approved February 12, 1901.

The message also announced that the House had agreed to the amendments of the Senate to the following bills:

H. R. 5498. An act to provide for circuit and district courts of the United States at Albany, Ga.; and

H. R. 1860. An act for the relief of certain enlisted men of the Twentieth Regiment of New York Volunteer Infantry.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 10558) referring the claim of Hannah S. Crane and others to the Court of Claims.

The message also announced that the House had passed the following bills and joint resolution; in which it requested the concurrence of the Senate:

H. R. 3628. An act for the relief of Claude B. Alverson;

H. R. 15586. An act extending the provisions of section 2301 of the Revised Statutes of the United States to homestead settlers on lands in the State of Minnesota ceded under the act of Congress entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889;

H. R. 16793. An act to amend section 1854 of the Revised Statutes of the United States, restricting appointments to office of members of the legislative assemblies in Territories;

H. R. 17580. An act validating certain conveyances of the Northern Pacific Railroad Company and the Northern Pacific Railway Company;

H. R. 17861. An act to grant to Charles H. Cornell the right to abut a dam across the Niobrara River on the Fort Niobrara Military Reservation, Nebr., and to construct and operate a trolley or electric-railway line and telegraph and telephone lines across said reservation;

H. R. 18637. An act to authorize the city of Buffalo, N. Y., to construct a tunnel under Lake Erie and Niagara River and to erect and maintain an inlet pier therefrom for the purpose of supplying the city of Buffalo with pure water;

H. R. 19013. An act to amend an act entitled "An act to authorize the board of commissioners for the Connecticut bridge and highway district to construct a bridge across the Connecticut River at Hartford, in the State of Connecticut; and

H. J. Res. 208. Joint resolution to authorize the President of the United States to convey to the foreign governments participating in the Louisiana Purchase Exposition the grateful appreciation of the Government and the people of the United States.

The message further announced that the House had disagreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 17473) making appropriations for the support of the Army for the fiscal year ending June 30, 1906, recedes from its disagreement to the amendment of the Senate numbered 1, insists upon its disagreement to the residue of the amendments to the said bill, asks a further conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. HULL, Mr. CAPRON, and Mr. HAY managers at the conference on the part of the House.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

S. 3479. An act making provision for conveying in fee certain public grounds in the city of St. Augustine, Fla., for school purposes;

H. R. 659. An act correcting the record of Harris Graffen; and

H. R. 17939. An act relating to the construction of a dam and reservoir on the Rio Grande, in New Mexico, for the impounding of the flood waters of said river for purposes of irrigation.

CREDENTIALS.

Mr. FOSTER of Washington presented the credentials of Samuel H. Piles, chosen by the legislature of the State of Washington a Senator from that State for the term beginning March 4, 1905; which were read and ordered to be filed.

PETITIONS AND MEMORIALS.

Mr. QUARLES presented petitions of Badger Lodge, No. 618; of Baraboo Lodge, No. 176; of Green Bay Lodge, No. 297; of Langlade Lodge, No. 536; of Nemadgi Lodge, No. 290, and of Wisconsin Valley Lodge, No. 633, all of the Brotherhood of Locomotive Engineers, in the State of Wisconsin, praying for the passage of the so-called "employers' liability bill;" which were referred to the Committee on Interstate Commerce.

He also presented memorials of sundry citizens of Fort Atkinson, Green Valley, Lincoln County, Moon, Portage County, Readstown, Stratford, and Stevens Point, all in the State of Wisconsin, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sundays; which were referred to the Committee on the District of Columbia.

Mr. GALLINGER presented a petition of sundry citizens of Cheshire County, N. H., praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

He also presented a petition of Nashua Subdivision, No. 483, Brotherhood of Locomotive Engineers, of Nashua, N. H., praying for the enactment of legislation to prohibit the employment of any man as a locomotive engineer who has not had at least three years' experience as a locomotive fireman or one year's experience as a locomotive engineer; which was referred to the Committee on Interstate Commerce.

Mr. PERKINS presented memorials of sundry citizens of Long Beach, Artesia, Norwalk, Los Nietos, Whittier, Austin, National City, San Diego, and Riverside, all in the State of California, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented memorials of sundry citizens of Watsonville, Lompoc, San Jose, Clovis, Gilroy, San Francisco, Hoolester, and Los Angeles, all in the State of California, remonstrating against the enactment of legislation to enlarge the powers

of the Interstate Commerce Commission; which were referred to the Committee on Interstate Commerce.

He also presented a resolution adopted by the Richmond District Improvement Association, of San Francisco, Cal., commending the President for his endeavor to secure proper regulation of railroad charges; which was referred to the Committee on Interstate Commerce.

Mr. PLATT of New York presented petitions of Gardner R. Colby Subdivision, No. 311, of Binghamton; of Elmira Subdivision, No. 41, of Elmira; of Greenbush Subdivision, No. 59, of Rensselaer; of Troy Subdivision, No. 87, of Troy; of United Subdivision, No. 292, of Middletown; of J. D. Layney Subdivision, No. 421, of East Buffalo; of J. C. Sibley Subdivision, No. 35, of Rochester; of G. M. Hallstead Subdivision, No. 434, of Elmira, and of Silloway Subdivision, No. 418, of Mechanicsville, all of the Brotherhood of Locomotive Engineers, in the State of New York, praying for the enactment of legislation prohibiting the employment of any person as a locomotive engineer who has not had at least three years' experience as a locomotive fireman, or one year's experience as a locomotive engineer; which were referred to the Committee on Interstate Commerce.

Mr. COCKRELL presented sundry petitions of Brookfield Subdivision, No. 616, of Brookfield; of Great Western Subdivision, No. 502, of Kansas City; of E. Butler Subdivision, No. 507, of Monett; of A. B. Youngson Subdivision, No. 487, of St. Louis; of Mexico Subdivision, No. 8, of Slater; of Sedalia Subdivision, No. 178, of Jefferson City; of Stanberry Subdivision, No. 17, of Stanberry; of Missouri Subdivision, No. 471, of Trenton; of Mammoth Springs Subdivision, No. 285, of Thayer; of Mizpeth Subdivision, No. 428, of St. Louis; of Ozark Subdivision, No. 83, of North Springfield; of J. L. Parish Subdivision, No. 556, of New Franklin, and of Bridge and Tunnel Subdivision, No. 327, of St. Louis, all of the Brotherhood of Locomotive Engineers, in the State of Missouri, praying for the enactment of legislation prohibiting the employment of any man as a locomotive engineer who has not had at least three years' experience as a locomotive fireman, or one year's experience as a locomotive engineer; which were referred to the Committee on Interstate Commerce.

He also presented a memorial of sundry citizens of Hamilton, Mo., and a memorial of the Religious Liberty Bureau, of Takoma Park Station, Washington, D. C., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. BLACKBURN presented a petition of Allingham Subdivision, No. 271, Brotherhood of Locomotive Engineers, of Covington, Ky., and a petition of Ludlow Subdivision, No. 603, Brotherhood of Locomotive Engineers, of Ludlow, Ky., praying for the enactment of legislation to prohibit the employment of any man as a locomotive engineer who has not had at least three years' experience as a locomotive fireman or one year's experience as a locomotive engineer; which were referred to the Committee on Interstate Commerce.

Mr. KITTREDGE presented the petitions of J. Hepburn and 112 other citizens of Madison, of G. W. Rogers and 16 other citizens of Winfred, of N. B. Baldwin and 37 other citizens of Canton, and of Adam Eisemann and 63 other citizens of Bowdle, all in the State of South Dakota, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented the petition of J. F. Halla and 81 other citizens of Armour, S. Dak., praying that an appropriation of $5,000 be made for sinking artesian wells at Lake Andes, Yankton Indian Reservation, in that State; which was referred to the Committee on Commerce.

Mr. DILLINGHAM presented a petition of sundry citizens of Milton, Vt., praying for the enactment of legislation providing for governmental supervision of railroads, and for the establishment of a parcels-post and post-check currency system; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of sundry citizens of Woodstock, Vt., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

Mr. HANSBROUGH presented a memorial of sundry citizens of Lansford, N. Dak., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

Mr. WETMORE presented a petition of Providence Subdivision, No. 57, Brotherhood of Locomotive Engineers, of Providence, R. I., praying for the enactment of legislation to prohibit the employment of any man as a locomotive engineer who has not had at least three years' experience as a locomotive fireman or one year's experience as a locomotive engineer; which was referred to the Committee on Interstate Commerce.

Mr. TALIAFERRO presented a petition of Orange Belt Subdivision, No. 309, Brotherhood of Locomotive Engineers, of Jacksonville, Fla., praying for the enactment of legislation providing for qualifications for locomotive engineers and firemen; which was referred to the Committee on Interstate Commerce.

Mr. PATTERSON presented memorials of sundry citizens of Merino, Delta, Palisades, Atwood, Canon City, and Paonia, all in the State of Colorado, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented petitions of Denver Subdivision, No. 186, Brotherhood of Locomotive Engineers, of Denver; of Silver State Subdivision, No. 451, Brotherhood of Locomotive Engineers, of Denver; of Anchor Subdivision, No. 505, Brotherhood of Locomotive Engineers, of La Junta; of Grand Valley Subdivision, No. 488, Brotherhood of Locomotive Engineers, of Grand Junction; of Trinidad Subdivision, No. 430, Brotherhood of Locomotive Engineers, of Trinidad; of Seven Castles Subdivision, No. 515, Brotherhood of Locomotive Engineers, of Basalt, and of Golden Circle Subdivision, No. 546, Brotherhood of Locomotive Engineers, of Canon City, all in the State of Colorado, praying for the enactment of legislation regulating the requirements of locomotive engineers and firemen; which were referred to the Committee on Interstate Commerce.

Mr. STONE presented a memorial of sundry citizens of Marion County, Mo., and a memorial of sundry citizens of Rockville, Mo., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented petitions of Subdivisions Nos. 8, 285, 471, 83, 556, 428, 327, 502, 487, 507, 17, 173, and 616, of Slater, Thayer, Trenton, Springfield, New Franklin, East St. Louis, St. Louis, Kansas City, Monett, Stanberry, Jefferson City, and Brookfield, all of the Brotherhood of Locomotive Engineers, in the State of Missouri, praying for the enactment of legislation to prohibit the employment of any man as a locomotive engineer who has not had at least three years' experience as a locomotive fireman or one year's experience as a locomotive engineer; which were referred to the Committee on Interstate Commerce.

Mr. LONG presented memorials of sundry citizens of Mitchell County, Yates Center, Thayer, Osage County, Elsmore, Harrington, Greenwood County, Lowe, Rooks County, Logan, and Ottawa, all in the State of Kansas, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. SIMMONS presented a petition of sundry citizens of Randolph County, N. C., praying for the enactment of legislation authorizing the regulation of railroad rates by the Government and for the adoption of a parcels-post and post-check currency; which was referred to the Committee on Interstate Commerce.

Mr. FRYE presented petitions of Grindstone Subdivision, No. 588, Brotherhood of Locomotive Engineers, of Houlton; of Ticonic Subdivision, No. 508, Brotherhood of Locomotive Engineers, of Bangor, and of Pleasant River Subdivision, No. 440, Brotherhood of Locomotive Engineers, of Henderson, all in the State of Maine, praying for the enactment of legislation to prohibit the employment of any man as a locomotive engineer who has not had at least three years' experience as a locomotive fireman or one year's experience as a locomotive engineer; which were referred to the Committee on Interstate Commerce.

CRIMINAL AND PAUPER CLASSES.

Mr. MONEY. I ask to have printed in one book six separate documents already in print and the copies of which have been exhausted. They are recommended by the American Bar Association and the International Congress of Criminal Pathology. These documents comprise a very valuable and scientific work, and I move that they be printed in one volume as a public document.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. SCOTT, from the Committee on Military Affairs, to whom was referred the bill (S. 7254) for the relief of Bert E. Barnes, reported it without amendment, and submitted a report thereon.

Mr. CLARK of Wyoming, from the Committee on Public Lands, to whom was referred the bill (S. 6944) to authorize the resurvey of certain lands in the State of Wyoming, reported it with amendments, and submitted a report thereon.

Mr. ALGER. I am directed by the Committee on Military Affairs, to whom was referred the bill (S. 3736) for the relief of certain enlisted men of the Twentieth Regiment of New York Volunteer Infantry, to report it adversely, and I move that it be postponed indefinitely.

Mr. COCKRELL. The bill is not reported adversely. It is reported back to the Senate, and the committee ask that it be indefinitely postponed because a House bill like it has been reported favorably and is now on the Calendar.

The PRESIDENT pro tempore. The bill will be indefinitely postponed.

Mr. COCKRELL. I am directed by the Committee on Military Affairs, to whom was referred the bill (S. 6510) for the relief of Capt. Frank D. Ely, to report it back and ask that the committee be discharged and that the bill be indefinitely postponed, because we have reported a House bill just like it favorably, and it is on the Calendar.

The PRESIDENT pro tempore. The bill will be indefinitely postponed.

Mr. COCKRELL. It is not right to have the entry made that a bill is reported adversely, and that is why I called attention to it. It is not reported adversely, but it is reported back that the committee may be discharged and the bill indefinitely postponed to relieve the committee of it, but it is not an adverse report.

Mr. HALE. I am directed by the Committee on Naval Affairs, to whom was referred the bill (H. R. 18467) making appropriations for the naval service for the fiscal year ending June 30, 1906, and for other purposes, to report it with amendments, and I submit a report thereon. I give notice that I shall call the bill up for consideration at a very early day.

The PRESIDENT pro tempore. The bill will be placed on the Calendar.

Mr. BURNHAM, from the Committee on Claims, to whom was referred the bill (H. R. 4637) authorizing and directing the Secretary of the Treasury to pay James L. Anderson the sum of $598.28, reported it without amendment, and submitted a report thereon.

Mr. WARREN, from the Committee on Claims, to whom was referred the bill (H. R. 11664) to reimburse the Illinois Central Railroad Company for damage to the union depot at Louisville, Ky., by blasting in the Ohio River, reported it without amendment, and submitted a report thereon.

Mr. LODGE, from the Committee on the Philippines, to whom was referred the bill (H. R. 18965) to revise and amend the tariff laws of the Philippine Islands, and for other purposes, reported it with an amendment.

Mr. HEYBURN, from the Committee on Mines and Mining, to whom was referred the bill (S. 6975) to amend section 2 of an act entitled "An act to extend the coal-land laws to the district of Alaska," approved June 6, 1900, amended April 28, 1904, reported it without amendment, and submitted a report thereon.

Mr. FAIRBANKS, from the Committee on Foreign Relations, to whom the subject was referred, reported an amendment proposing to appropriate $25,000 to pay William Radcliffe as full indemnity for loss of property inflicted in the State of Colorado by residents of that State, intended to be proposed to the general deficiency appropriation bill, and moved that it be printed, and, with the accompanying papers, referred to the Committee on Appropriations; which was agreed to.

RAINY RIVER BRIDGE, IN MINNESOTA.

Mr. BERRY. I am directed by the Committee on Commerce, to whom was referred the bill (H. R. 18751) to extend the time for the construction of a bridge across Rainy River by the International Bridge and Terminal Company, to report it favorably without amendment. At the request of the Senator from Minnesota [Mr. NELSON], who is anxious that the bill should be passed at once, and as it is a very short bill, I ask unanimous consent for its present consideration.

There being no objection, the Senate as in Committee of the Whole proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

KENNETH M'ALPINE.

Mr. MARTIN. I am directed by the Committee on Naval Affairs, to whom was referred the bill (S. 6846) to reinstate Kenneth McAlpine as a lieutenant in the Navy, to report it favorably without amendment, and I ask for the present consideration of the bill.

The Secretary read the bill, as follows:

Be it enacted, etc., That the President of the United States be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, Kenneth McAlpine a lieutenant on the active list of the Navy, to take rank as No. 1 on the list of lieutenants, the said Kenneth McAlpine having served for a period of twenty-five years and ten months, from September, 1877, to July, 1903, as an engineer officer in the Navy.

SEC. 2. That the said Kenneth McAlpine shall receive no pay or emolument except from the date of his appointment, and that he shall be additional to the number of officers prescribed by law for the grade of lieutenant in the Navy, and to any grade to which he may hereafter be promoted. And that for the purpose of computing his pay his longevity shall be considered the same as if he had never been out of the service.

SEC. 3. That the said Kenneth McAlpine shall perform engineering duty only.

Mr. MALLORY. I should like to inquire if this person is out of the Navy now?

Mr. MARTIN. He is now out of the Navy, but the circumstances of his discharge from the Navy have been thoroughly investigated by the Department, and the Secretary of the Navy recommends the passage of this bill.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

RETURN OF BATTLE FLAGS.

Mr. ALGER. I am directed by the Committee on Military Affairs, to whom was referred the joint resolution (H. J. Res. 217) to return to the proper authorities certain Union and Confederate battle flags, to report it favorably without amendment, and I ask for its present consideration.

Mr. HALE. I must object, Mr. President, to anything further except actual morning business.

The PRESIDENT pro tempore. The Senator from Maine objects to the present consideration of the bill, and it goes to the Calendar.

Mr. HALE subsequently said: I wish to say, in view of the merits of the joint resolution reported by the Senator from Michigan [Mr. ALGER], which I did not understand as being a matter of national importance, I withdraw my objection.

The PRESIDENT pro tempore. The joint resolution will be read.

The joint resolution was read, as follows:

Resolved, etc., That the Secretary of War be, and he is hereby, authorized to deliver to the proper authorities of the respective States in which the regiments which bore these colors were organized certain Union and Confederate battle flags now in the custody of the War Department, for such final disposition as the aforesaid proper authorities may determine.

The PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution was considered as in Committee of the Whole.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

STATUE OF FRANCES E. WILLARD.

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the resolution submitted by Mr. CULLOM on the 22d instant, reported favorably thereon; and it was considered by unanimous consent, and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed and bound of the proceedings in Congress upon the acceptance of the statue of the late Frances E. Willard, presented by the State of Illinois, 16,500 copies, of which 5,000 shall be for the use of the Senate, 10,000 for the use of the House of Representatives, and the remaining 1,500 shall be for the use and distribution by the governor of the State of Illinois; and the Secretary of the Treasury is hereby directed to have printed an engraving of said statue to accompany said proceedings, said engraving to be paid for out of the appropriation for the Bureau of Engraving and Printing.

BILLS INTRODUCED.

Mr. SCOTT introduced a bill (S. 7255) for the relief of the trustees of the Presbyterian Church at Frenchcreek, W. Va.; which was read twice by its title, and referred to the Committee on Claims.

Mr. BATE introduced a bill (S. 7256) for the relief of the estate of Anthony S. Abbay; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

Mr. LONG introduced a bill (S. 7257) to repeal a part of an act making appropriations for the legislative, executive, and

judicial expenses of the Government for the fiscal year ending June 30, 1905; which was read twice by its title, and referred to the Committee on Territories.

Mr. BALL introduced a bill (S. 7258) for the relief of the contractors for certain monitors; which was read twice by its title, and referred to the Committee on Claims.

Mr. TELLER introduced a bill (S. 7259) for the relief of George Washington Turner; which was read twice by its title, and referred to the Committee on Claims.

Mr. SIMMONS introduced a bill (S. 7260) granting an increase of pension to George W. Gearey; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 7261) to authorize the appointment of Acting Asst. Surg. Reuben A. Campbell, United States Navy, as an assistant surgeon in the United States Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 7262) to amend the act entitled "An act to provide for the construction of a light-house and fog signal at Diamond Shoal, on the coast of North Carolina, at Cape Hatteras," approved April 28, 1904; which was read twice by its title, and referred to the Committee on Commerce.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. CLARK of Wyoming submitted an amendment proposing to increase the appropriation for geological surveys in various portions of the United States from $175,000 to $200,000, intended to be proposed by him to the sundry civil appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Appropriations.

Mr. ANKENY submitted an amendment providing that one first-class battle ship shall be built, subject to the provisions heretofore made, on or near the coast of the Pacific Ocean, or in the waters connecting therewith, etc., intended to be proposed by him to the naval appropriation bill; which was referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. BURNHAM submitted an amendment proposing to appropriate $3,500 for purchase and installation of an elevator in the customs-house at Portsmouth, N. H., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. MALLORY submitted an amendment relative to the improvement of Fernandina Harbor, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

He also submitted an amendment proposing to appropriate $40,000 for continuing improvement of Crystal, Anclote, Suwanee, and Withlacoochee rivers, Florida, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. PETTUS submitted an amendment relative to the payment for damages to the steamer *Hikosan Maru*, and also for payment for damages to the steamer *Shirley*, intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. WETMORE submitted an amendment relative to the deepening of the channel to 18 feet of Pawtucket River, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. DILLINGHAM (for Mr. PROCTOR) submitted an amendment proposing to appropriate $6,000 for the purchase of land for a drill ground at Fort Ethan Allen, Vt., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

He also (for Mr. PROCTOR) submitted an amendment proposing to appropriate $19,000 for the enlargement of the military post, Fort Ethan Allen, Vt., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. CLAY submitted an amendment providing for the examination and survey of Welles Harbor, Midway Islands, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

He also submitted an amendment proposing to increase the appropriation for improving the Oconee River, Georgia, from $10,000 to $40,000, etc., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. MCENERY submitted an amendment proposing to appropriate $200,000 to be expended for the Mississippi River Commission during the period of two years in continuing improvements at New Orleans, La., Natchez and Vidalia, Mississippi and Louisiana, etc., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

AMENDMENT TO PUBLIC BUILDINGS BILL.

Mr. LONG submitted an amendment intended to be proposed by him to the bill (H. R. 18973) to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes; which was referred to the Committee on Public Buildings and Grounds, and ordered to be printed.

STATUE OF THOMAS JEFFERSON.

Mr. WETMORE submitted the following concurrent resolution; which was referred to the Committee on the Library:

Whereas Jefferson M. Levy, a resident of New York, has offered to present to the municipality of Angers, the birthplace of David, the sculptor of the statue of Thomas Jefferson in the Rotunda of the Capitol, a cast of said statue, and said municipality has accepted such offer;

Resolved by the Senate (the House of Representatives concurring), That permission be granted to Jefferson M. Levy to have a cast made, at his expense, for presentation by him to the municipality of Angers, in the Republic of France, of the statue of Thomas Jefferson, in the Rotunda of the Capitol, presented to the United States by the late Commodore Uriah P. Levy; that said cast be made at such time and in such manner as shall be directed by the chairman of the Senate and House Committees on the Library.

JUDICIAL DISTRICTS IN WASHINGTON.

Mr. SPOONER. I ask unanimous consent for the present consideration of the bill (H. R. 2531) to divide Washington into two judicial districts.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments.

The first amendment of the Committee on the Judiciary was, in section 1, page 1, line 3, after the word "That," to insert "all that portion of;" in the same line, after the name "Washington," to strike out "is divided into judicial districts, which shall be called the eastern and western judicial districts of the State of Washington. The eastern district" and insert "which;" in line 13, after the word "thereof," to strike out "The western district includes" and insert "is hereby detached from the judicial district of Washington and made a separate judicial district, and shall be called 'the eastern district of Washington,' and;" and, on page 2, line 4, after the word "thereof," to insert "shall hereafter be the western district of Washington;" so as to make the section read:

That all that portion of the State of Washington which includes the counties of Stevens, Ferry, Okanogan, Chelan, Spokane, Lincoln, Douglas, Adams, Franklin, Wallawalla, Garfield, Columbia, Asotin, Whitman, Yakima, Klickitat, Kittitas, and any and all Indian reservations in one or more of said counties, and such other counties as may be created in that portion of the State of Washington lying east of the Cascade Mountains, with the waters thereof, is hereby detached from the judicial district of Washington and made a separate judicial district, and shall be called "the eastern district of Washington," and the residue of said State of Washington, with the waters thereof, shall hereafter be the western district of Washington.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 19, after the word "shall," to strike out "within their respective jurisdictions in said western judicial district;" so as to read:

The district attorney, assistant district attorneys, marshal, deputy marshals, deputy clerks, and referees in bankruptcy resident in said western judicial district of Washington as constituted by this act shall continue in office and continue to be such officers in such western district until the expiration of their respective terms of office as heretofore fixed by law, or until their successors shall be duly appointed and qualified.

The amendment was agreed to.

The next amendment was, in section 6, page 4, line 3, before the word "law," to strike out "existing;" in line 5, after the word "marshals," to strike out "clerks;" in the same line, after the word "districts," to insert "except clerks;" in line 6, before the word "law," to strike out "under the provisions of existing" and to insert "by;" and after the word "constituted," in line 8, to insert "and the clerks for said districts shall receive the same fees and emoluments as are now prescribed by law for the clerks of the circuit and district courts of the northern district of California;" so as to make the section read:

SEC. 6. That the office of marshal and district attorney in each of said districts, deputy marshals and assistant district attorneys, and all other offices authorized by law and made necessary by the creation of said two districts and the provisions of this act, and all vacancies created thereby in either of said districts as constituted by this act, shall be filled in the manner provided by law. The salaries, pay, fees, and allowances of the judges, district attorneys, marshals, and other officers in said districts, except clerks, until changed by law, shall be the same, respectively, as now fixed by law for such officers in the judicial district of Washington as heretofore constituted, and the clerks for said districts shall receive the same fees and emoluments as are

now prescribed by law for the clerks of the circuit and district courts of the northern district of California.

The amendment was agreed to.

The next amendment was, on page 4, section 7, line 14, before the word "criminal," to strike out "civil and" and to insert "except;" in line 22, before the word "jurisdiction," to insert "to that end;" and in the same line, after the word "jurisdiction," to strike out "thereof is hereby transferred to and" and to insert "over the same is hereby;" on page 5, in the same section, line 2, after the word "nature," to strike out "civil and" and to insert "except;" in line 11, after the word "jurisdiction," to strike out "thereof" and to insert "over the same;" in line 12, after the word "hereby," to strike out "transferred to and;" and in line 17, before the word "criminal," to strike out "both civil and" and to insert "except;" so as to make the section read:

SEC. 7. That all causes and proceedings of every name and nature, except criminal, now pending in the courts of the judicial district of Washington as heretofore constituted, whereof the courts of the eastern judicial district of Washington as hereby constituted would have had jurisdiction if said district and the courts thereof had been constituted when said causes or proceedings were instituted, shall be, and are hereby, transferred to and the same shall be proceeded with in the eastern judicial district of Washington as hereby constituted, and to that end jurisdiction over the same is hereby vested in the courts of said eastern judicial district, and the records and proceedings therein and relating to said proceedings and causes shall be certified and transferred thereto; and all causes and proceedings of every name and nature, except criminal, now pending in the courts of the judicial district of Washington as heretofore constituted, whereof the courts of the western judicial district of Washington as hereby constituted would have had jurisdiction if said district and the courts thereof had been constituted when said causes or proceedings were instituted, shall be, and are hereby, transferred to and the same shall be proceeded with in the western judicial district of Washington as hereby constituted, and jurisdiction over the same is hereby vested in the courts of said western judicial district, and the records and proceedings therein and relating to said proceedings and causes shall be certified and transferred thereto: *Provided*, That all motions and causes submitted, and all causes and proceedings, except criminal, including proceedings in bankruptcy, now pending in said judicial district of Washington as heretofore constituted, in which the evidence has been taken in whole or in part before the present district judge of the judicial district of Washington as heretofore constituted, or taken in whole or in part and submitted and passed upon by the said district judge, shall be proceeded with and disposed of in said western judicial district of Washington as constituted by this act.

The amendment was agreed to.

The next amendment was, on page 6, after line 21, to strike out section 10, as follows:

SEC. 10. That all prosecutions for crimes or offenses hereafter committed in either of said districts shall be cognizable within the district in which committed, and all prosecutions for crimes or offenses committed before the passage of this act in which indictments have not been found or proceedings instituted shall be cognizable within the district as hereby constituted in which such crimes or offenses were committed.

And in lieu thereof to insert:

SEC. 10. That the State of Washington shall continue as heretofore to constitute one judicial district, and the United States circuit court and the United States district court for said district are continued in existence with all the jurisdiction and powers of each, respectively, for the purpose of holding and taking cognizance of criminal causes pending, or which may be hereafter commenced and prosecuted for criminal offenses against the laws of the United States, committed in any part of said State previous to the time when this act takes effect, and when necessary to obtain indictments, or for the trial of any such case or cases, jurors, grand and petit, shall be selected, drawn, and summoned from the entire State, and such causes shall be commenced and prosecuted in the same manner as if this act had never been passed.

The amendment was agreed to.

The next amendment was, in section 12, page 7, line 22, after the word "effect," to strike out "on the 1st day of July, 1905," and to insert "from and after its approval by the President;" so as to make the section read:

SEC. 12. That this act shall take effect from and after its approval by the President.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on Public Lands:

H. R. 3628. An act for the relief of Claude B. Alverson;

H. R. 15586. An act extending the provisions of section 2301 of the Revised Statutes of the United States to homestead settlers on lands in the State of Minnesota, ceded under the act of Congress entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889; and

H. R. 17580. An act validating certain conveyances of the Northern Pacific Railroad Company and the Northern Pacific Railway Company.

The following bills were severally read twice by their titles, and referred to the Committee on Commerce:

H. R. 17861. An act to grant to Charles H. Cornell the right to abut a dam across the Niobrara River on the Fort Niobrara Military Reservation, Nebr., and to construct and operate a trolley or electric railway line and telegraph and telephone lines across said reservation;

H. R. 18637. An act to authorize the city of Buffalo, N. Y., to construct a tunnel under Lake Erie and Niagara River and to erect and maintain an inlet pier therefrom for the purpose of supplying the city of Buffalo with pure water; and

H. R. 19013. An act to amend an act entitled "An act to authorize the board of commissioners for the Connecticut bridge and highway district to construct a bridge across the Connecticut River at Hartford, in the State of Connecticut.

H. R. 16793. An act to amend section 1854 of the Revised Statutes of the United States restricting appointments to office of members of the legislative assemblies in Territories was read twice by its title, and referred to the Committee on Territories.

H. J. Res. 208. Joint resolution to authorize the President of the United States to convey to the foreign governments participating in the Louisiana Purchase Exposition the grateful appreciation of the Government and the people of the United States was read twice by its title, and referred to the Committee on Foreign Relations.

HANNAH S. CRANE.

Mr. STEWART submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 10558) referring the claim of Hannah S. Crane and others to the Court of Claims having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same.

WM. M. STEWART,
THOS. S. MARTIN,
MOSES E. CLAPP,
Managers at the conference on the part of the Senate.
JOSEPH V. GRAFF,
H. M. GOLDFOGLE,
Managers at the conference on the part of the House.

The report was agreed to.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. F. BARNES, one of his secretaries, announced that the President had approved and signed the following acts:

On February 20, 1905:

S. 2193. An act granting a pension to William Penn Mack;
S. 2674. An act granting a pension to Ellen Orr;
S. 3722. An act granting a pension to John W. Victor;
S. 3934. An act granting a pension to Susan E. Bellows;
S. 4025. An act granting a pension to Mary E. Chamberlain;
S. 4492. An act granting a pension to Joseph F. Kelly;
S. 4619. An act granting a pension to Anna L. Bartleson;
S. 4775. An act granting a pension to Garetta L. Hodgkins;
S. 4886. An act granting a pension to Mary A. Massey;
S. 5316. An act granting a pension to Thomas Pickford;
S. 5344. An act granting a pension to Martha T. Hamlin;
S. 5499. An act granting a pension to Matilda J. Henderson;
S. 5518. An act granting a pension to Bernard J. Boldermann;
S. 5651. An act granting a pension to Georgianna Eubanks;
S. 41. An act granting an increase of pension to Sarah E. Gillette;
S. 139. An act granting an increase of pension to Solomon Knight;
S. 173. An act granting an increase of pension to John G. Haskell;
S. 459. An act granting an increase of pension to William H. Trevillian;
S. 1452. An act granting an increase of pension to Mahala Forkner;
S. 1560. An act granting an increase of pension to William Sweet;
S. 1562. An act granting an increase of pension to Riley W. Cavins;
S. 1565. An act granting an increase of pension to Samuel N. Rockhold;
S. 1724. An act granting an increase of pension to Sarah F. McCune;

S. 2031. An act granting an increase of pension to Henry W. Gay;
S. 2107. An act granting an increase of pension to Andrew R. McCurdy;
S. 2240. An act granting an increase of pension to Samuel B. Mann;
S. 2256. An act granting an increase of pension to John Spriggs;
S. 2291. An act granting an increase of pension to William W. Rollins;
S. 2464. An act granting an increase of pension to John Aylers;
S. 2538. An act granting an increase of pension to Samuel A. Thomas;
S. 2731. An act granting an increase of pension to John R. McCullough;
S. 2977. An act granting an increase of pension to Andrew J. Larrabee;
S. 2986. An act granting an increase of pension to William Barkis;
S. 3023. An act granting an increase of pension to Sanford S. Henderson;
S. 3194. An act granting an increase of pension to Stephen Gilbert;
S. 3378. An act granting an increase of pension to Jacob H. Heck;
S. 3389. An act granting an increase of pension to Joel Carpenter;
S. 3392. An act granting an increase of pension to Cyrus N. Bradley;
S. 3467. An act granting an increase of pension to Emmory A. Wood;
S. 3660. An act granting an increase of pension to Mary Oakley;
S. 3662. An act granting an increase of pension to William A. Wilkins;
S. 3731. An act granting an increase of pension to Arthur F. McNally;
S. 3841. An act granting an increase of pension to John M. Bigger;
S. 3897. An act granting an increase of pension to Gabriel H. Adams;
S. 3914. An act granting an increase of pension to John W. Branch;
S. 3953. An act granting an increase of pension to Thomas L. Sanborn;
S. 4073. An act granting an increase of pension to Comfort W. Watson;
S. 4101. An act granting an increase of pension to James H. Cate;
S. 4123. An act granting an increase of pension to George Simms;
S. 4128. An act granting an increase of pension to Peter Kaufman;
S. 4214. An act granting an increase of pension to Ella M. Roberts;
S. 4215. An act granting an increase of pension to Henry Berkstresser;
S. 4508. An act granting an increase of pension to John M. Bybee;
S. 4573. An act granting an increase of pension to Mary C. Buck;
S. 4605. An act granting an increase of pension to Charles R. Schmidt;
S. 4680. An act granting an increase of pension to Samuel T. Dickson;
S. 4681. An act granting an increase of pension to John H. Stubbs;
S. 4749. An act granting an increase of pension to Martha J. Patterson;
S. 4814. An act granting an increase of pension to Marcia H. Edgerly;
S. 4850. An act granting an increase of pension to Sarah V. Matlack;
S. 5059. An act granting an increase of pension to Tobias Meader;
S. 5072. An act granting an increase of pension to Samuel A. McNeil;
S. 5157. An act granting an increase of pension to Cellina H. Stephens;
S. 5233. An act granting an increase of pension to Susan A. Reynolds;
S. 5234. An act granting an increase of pension to John R. Leavens;
S. 5240. An act granting an increase of pension to Hugh R. Barnard;
S. 5253. An act granting an increase of pension to Joseph Mort;
S. 5322. An act granting an increase of pension to Perley B. Dickerson;
S. 5323. An act granting an increase of pension to William Geyser;
S. 5391. An act granting an increase of pension to Lucretia Johnson;
S. 5392. An act granting an increase of pension to William W. Willis;
S. 5463. An act granting an increase of pension to John M. C. Sowers;
S. 5539. An act granting an increase of pension to Albion L. Mitchell;
S. 5577. An act granting an increase of pension to La Fayette Smith;
S. 5669. An act granting an increase of pension to Alexander Hay;
S. 5705. An act granting a pension to Mary L. Faunt Le Roy;
S. 6029. An act granting a pension to Ursula Bayard;
S. 6134. An act granting a pension to Mary Elizabeth McClaren;
S. 6289. An act granting a pension to Charles Morris;
S. 6438. An act granting a pension to Cyrell Boutiette;
S. 6550. An act granting a pension to Jane Johns;
S. 6799. An act granting a pension to Ezra Walker Abbott;
S. 5813. An act granting an increase of pension to Herbert E. Farnsworth;
S. 5819. An act granting an increase of pension to Samuel K. Long;
S. 5865. An act granting an increase of pension to Foster W. Gassett;
S. 5903. An act granting an increase of pension to Patrick Duffy;
S. 5960. An act granting an increase of pension to John A. Sargent;
S. 5999. An act granting an increase of pension to William H. White;
S. 6025. An act granting an increase of pension to Belle K. Theaker;
S. 6026. An act granting an increase of pension to Stephen Girard Nichols;
S. 6042. An act granting an increase of pension to James V. Williams;
S. 6087. An act granting an increase of pension to Salmon S. Mathews;
S. 6097. An act granting an increase of pension to Thomas M. Clark;
S. 6098. An act granting an increase of pension to Seth Lewis;
S. 6115. An act granting an increase of pension to Edmund B. Kanada;
S. 6155. An act granting an increase of pension to Matthew F. Locke;
S. 6171. An act granting an increase of pension to Fannie C. Avis;
S. 6174. An act granting an increase of pension to Chittle Chittleson;
S. 6188. An act granting an increase of pension to William Sartwell;
S. 6218. An act granting an increase of pension to Adam E. King;
S. 6224. An act granting an increase of pension to Anna M. Benny;
S. 6344. An act granting an increase of pension to Richard B. Dickinson;
S. 6346. An act granting an increase of pension to Benjamin F. Sheppard;
S. 6348. An act granting an increase of pension to Richard E. Hyde;
S. 6381. An act granting an increase of pension to John Hamilton;
S. 6402. An act granting an increase of pension to Samuel Lewis;
S. 6414. An act granting an increase of pension to John O'Kief;
S. 6439. An act granting an increase of pension to Thomas Conroy;
S. 6444. An act granting an increase of pension to Melkert H. Burton;
S. 6445. An act granting an increase of pension to Lizzie A. Holden;
S. 6475. An act granting an increase of pension to Isaac Slater;

S. 6526. An act granting an increase of pension to Stephen A. Cox;

S. 6548. An act granting an increase of pension to Levincy Walker;

S. 6549. An act granting an increase of pension to Charles T. West;

S. 6553. An act granting an increase of pension to Orlando Kennedy;

S. 6554. An act granting an increase of pension to Martin Gillett;

S. 6586. An act granting an increase of pension to Laura E. Campbell;

S. 6605. An act granting an increase of pension to Simeon V. Sherwood;

S. 6654. An act granting an increase of pension to Stephen Dampier;

S. 6699. An act granting an increase of pension to Moses Frost;

S. 6718. An act granting an increase of pension to Nathaniel Salg; and

S. 6728. An act granting an increase of pension to Charles W. Cowing.

ORDER OF BUSINESS.

Mr. STEWART. I hope that there will be no further bills called up for passage this morning.

The PRESIDENT pro tempore. The morning business is not completed.

Mr. BURROWS. I understood that unanimous consent was given for the consideration of the last bill.

The PRESIDENT pro tempore. It was.

Mr. BURROWS. I should like unanimous consent to consider House bill 18728—a very brief bill. It is very important that it should be passed at an early day.

The PRESIDENT pro tempore. The Chair recognizes the Senator from Michigan.

Mr. STEWART. I shall have to object.

Mr. BURROWS. Let me say to the Senator——

Mr. STEWART. A great many Senators have bills in charge that they desire to call up for passage, and we will not get any appropriation bills through unless we go ahead with them.

The PRESIDENT pro tempore. The Senator from Nevada objects to the request of the Senator from Michigan.

Mr. KITTREDGE. I ask unanimous consent for the present consideration of the bill (H. R. 16986) to provide for the government of the Canal Zone, the construction of the Panama Canal, and for other purposes.

The PRESIDENT pro tempore. The resolution offered by the Senator from Maine [Mr. HALE] comes over from a previous day.

Mr. PLATT of Connecticut. The Senator from Maine is not here. I think that resolution may properly go over.

The PRESIDENT pro tempore. The Chair is informed that the request was that it might lie on the table.

Mr. PLATT of Connecticut. I wish to say with regard to the subject-matter of the resolution that I hope very much such an understanding will be arrived at between the managers and counsel for the respondent that the trial may be concluded this week, unless the Senate itself should take time to consider before voting.

Mr. KITTREDGE. I ask unanimous consent that the Senate proceed to the consideration of the Canal Zone bill.

Mr. PENROSE. I must object to that request until there is some understanding as to what is to be done with the appropriation bills.

Mr. SPOONER. I hope the Senator from Pennsylvania will not object. This is an exigency bill. The law expires on the 4th of March, and it is absolutely necessary that the bill in relation to the Canal Zone should get back to the House and become a law before the end of the session.

Mr. PLATT of Connecticut. And apparently the consideration of the bill was about concluded at the time of adjournment last evening.

Mr. STEWART. If there can be an agreement made when we will vote on it I will consent, but if we are to spend time debating that bill and defer all the appropriation bills I shall have to object to its consideration this morning.

Mr. PENROSE. Mr. President, I gave notice two days ago that I would call up the Post-Office appropriation bill to-day. I now find that I shall have to yield to the Senator from Nevada [Mr. STEWART] for the Indian appropriation bill and, in all probability, I shall have to yield to-morrow to the senior Senator from Maine [Mr. HALE] for the naval appropriation bill, which he has reported this morning. Certainly no more important measure is pending before the Senate than the post-office appropriation bill carrying as it does $180,000,000. I should like to know what is the intention of the Senate as to these pressing matters before I join in any unanimous-consent agreement.

Mr. KITTREDGE. I am reliably informed that the Canal Zone bill will pass within a very few minutes if consent is given for its consideration.

Mr. GALLINGER. Within five minutes beyond a doubt.

Mr. CULLOM. I hope the Senator from Pennsylvania will allow the canal bill to go through.

GOVERNMENT OF CANAL ZONE.

The PRESIDENT pro tempore. The Senator from South Dakota asks unanimous consent that the Senate proceed to the consideration of the Canal Zone bill.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 16986) to provide for the government of the Canal Zone, the construction of the Panama Canal, and for other purposes.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Maryland [Mr. MCCOMAS], on which the yeas and nays were ordered.

Mr. MCCOMAS. Is it in order now to have the roll called and end the matter?

Mr. CULLOM. I suggest to the Senator to withdraw the amendment.

Mr. MCCOMAS. The roll was called on agreeing to the amendment, but there was not a quorum; 26 to 12 was the vote, I think.

Mr. BERRY. I ask the Senator to withdraw the amendment.

Mr. MCCOMAS. Is it not now in order to have the roll called and dispose of it? I ask it as a parliamentary question.

The PRESIDENT pro tempore. It is in order, and the Chair will have the roll called.

Mr. MCCOMAS. And without debate?

Mr. CULLOM. Is it not in order by unanimous consent to withdraw the amendment?

The PRESIDENT pro tempore. It is by unanimous consent. Almost anything can be done by unanimous consent.

Mr. MCCOMAS. Is it now the parliamentary situation that the roll must be called without further debate, because the lack of a quorum was disclosed on the vote? Will debate be in order?

The PRESIDENT pro tempore. Of course debate is in order.

Mr. MCCOMAS. Then, if that is the case, on account of the urgency of the bill now pending, I shall be constrained by the situation of the public business to withdraw the amendment.

But, Mr. President, I wish in a single sentence to say that with a tonnage of 100,000 American ships, with 63 steamers and 300 sailing ships and others, the goods from the factories and the crops from the farms ought to be carried in American ships to Panama when the American people spend the money in the canal. We have done the like in respect to army and navy supplies, and the vote shows the temper of the Senate on this question.

But when there is a purpose to kill it or prolong it, if there be such, I am constrained, in the public interest, to withdraw the amendment, which I hope will soon be renewed by those who remain here, because the Panama Canal question requires that it shall be popularized by letting the American people, in American ships, carry the goods when they pay many millions to build the canal.

The PRESIDENT pro tempore. Then the order by which the yeas and nays were called——

Mr. MCCOMAS. I will presently withdraw it, as soon as the Senator from New Hampshire is heard.

The PRESIDENT pro tempore. The order demanding the yeas and nays will be reconsidered, and the Senator from Maryland withdraws the amendment.

Mr. MCCOMAS. I yield first to the Senator from New Hampshire.

Mr. GALLINGER. Mr. President, I have no desire to debate the matter. I regret exceedingly that the Senate did not in its wisdom see proper to put this amendment on the bill. I think it ought to have gone on; but I understand there is to be debate on the subject, and I join with other Senators in desiring to have the bill passed. For that reason I coincide with the proposition to withdraw the amendment.

Mr. GORMAN. Mr. President——

The PRESIDENT pro tempore. The bill is before the Senate as in Committee of the Whole.

Mr. MORGAN. I offer the following amendment.

Mr. GORMAN. I wish to say this only, that in the discussion of this matter I opposed the amendment offered by my colleague, first, because it had not been submitted to the committee which considered the bill, and, second, because the most careful examination I could give it in the time allowed convinced me that it was inopportune to present that question on this bill, for the reason that it would in all probability embarrass the Adminis-

tration in disposing of a contract which the old railroad company made with the Pacific Steamship Company, and it might have embarrassed it to the extent of continuing the monopoly which the President, by special order, has required to be abolished.

Mr. ALLISON. Mr. President, I voted against this amendment yesterday, seeing then what the Senate seems to see now, that it is impossible to give proper consideration to so important an amendment to the bill, and also having faith that the President of the United States will deal wisely and faithfully with the American marine.

Mr. GALLINGER. Mr. President, on that point I desire simply to state, in response to the Senator from Iowa, that the President of the United States will have very little to do with it; that the matter of carrying products to Panama for the purposes of the canal will be determined by subordinates in the Departments, and that, judging from the past, American ships will have a very poor show.

Mr. MORGAN. I offer an amendment to the bill to take the place of section 5 of the bill, which has been stricken out by the Senate.

The PRESIDENT pro tempore. The Senator from Alabama offers an amendment, which will be stated.

The SECRETARY. It is proposed to insert as section 5 the following:

SEC. 5. That if the President, in the exercise of powers conferred upon him by law, shall remove all or any of the members of the Isthmian Canal Commission, or if any of said offices shall become vacant for any cause, no appointments shall be made to fill such vacancies during a recess of Congress: *Provided*, That nothing contained in this act or in any other law shall in any wise delay, hinder, or prevent the President in the full exercise of the duty and power to proceed with the work of constructing the Panama Canal or in respect of any duty or power connected therewith.

Mr. MORGAN. Mr. President, there is no occasion for hasty legislation in Congress on the subject of the isthmian canal. It is generally supposed that unless we supply the place of the measure which was passed at the last session of Congress, and which will terminate on the 4th of March, by some additional legislation we will be at sea, and that the President will have no power to conduct the work of the canal.

For my part, Mr. President, after the Spooner Act was passed—and is retained and is still kept alive by the continual reference to it by the Congress of the United States and the President—and after the Hay-Varilla treaty was ratified and we acquired the sovereignty of the Canal Zone, I was willing to leave the Canal Zone without any further specific plan of government to be instituted by Congress, relying upon the decisions of the Supreme Court of the United States in the case of New Mexico, which we all recall, and in the case of California, that when the Government of the United States, by treaty or otherwise, comes into the occupancy of a new country the President of the United States, as the representative of the sovereignty of this land in its political relations, has the right to proceed to govern that country in accordance with the laws of nations.

That was done in New Mexico, it was done in California; and in New Mexico it was carried to the extent that a civil and criminal code of laws was instituted by the officer who commanded in that Territory at that time, and questions having arisen upon the validity of that code of laws the Supreme Court of the United States sustained its validity as being within the powers of the Government of the United States—I might say of the President of the United States as Commander in Chief of the Army of the United States.

Under those decisions and those principles which were established long before the Supreme Court of the United States ratified and reaffirmed them, when we made provision in advance for the acquisition of territory through which the Panama Canal was to be constructed, and provided ways and means for its construction, and provided an organization under the control of the Isthmian Canal Commission for that purpose, we had made all the preliminary arrangements that were essential to enable the President of the United States to construct that canal. We had specially imposed upon him the duty of its construction and we had provided the officers through whom he might construct it. Then we acquired the title to that zone under the Hay-Varilla treaty, and after four months of time beyond the date when the money was due we paid the money, and Panama surrendered that title into the hands of the United States.

Many of the nations of the earth, perhaps all the important nations of the earth, had confirmed the diplomatic movements through which we had acquired that zone, and there is no nation perhaps, except Colombia, that has the right to make any objection to our attitude with reference to the canal.

So the acquisition of that zone is an accomplished fact. That zone is a part of the territory of the United States, not for the purpose merely of constructing the canal, but for every purpose. When it came into the occupancy of the United States under the conditions I have been mentioning, the power to govern it was the same as it was in New Mexico and in California and under the Louisiana purchase. The Government of the United States after the Louisiana purchase was laboring under some serious doubts as to the constitutionality of that proceeding. Congress found itself embarrassed for the want of time to enact laws or a scheme of government for the Louisiana purchase or any part of it. But they found certain laws in force there. They found certain organizations of civil government in force there, and they passed a law which gave to the President of the United States plenary jurisdiction to govern that territory through such instrumentalities as he might appoint during the remainder of that session of Congress.

Now, Mr. President, that act of 1805, which I believe was the date of it, was merely affirmatory of the law of nations as it existed at that time and as it has since been frequently decided by the Supreme Court of the United States. That act was constitutional because it did not undertake to do anything more than to confirm on the part of Congress authority which the laws of nations gave to the President of the United States to enter upon and to control that territory.

When we entered into Panama and paid the $10,000,000 under the treaty and got the surrender of possession of the zone, we found ourselves precisely in the same legal attitude that the people of Louisiana were in, and that the Government of the United States was in at the time of the passage of the act to which I have just referred. Nevertheless we reaffirmed that act and extended its powers to the President. In what we did we did not propose to delegate to the President of the United States any of the powers of Congress. No lawyer in this body who has any conception of his duty to the country has ever attempted to delegate any of the constitutional legislative powers of Congress to any other department of the Government, nor did that act go to that extent.

We had passed a similar act in respect to the Philippines, and by this means Congress cleared up doubts and ratified the powers that the President and the military governor of the Philippines were at that time executing. I notice that Governor Taft, in his exercise of authority and in his writings and communications to the Government on that subject, carefully avoided the effort to derive any authority from that act of Congress for anything that he did in the Philippines. He relied upon the laws of nations, which were amply sufficient for the purpose of doing all that he did there, and I think he acted exactly right.

Therefore, Mr. President, if we should not pass the proposed law which is before the Senate at this time the President of the United States would simply be relegated to the condition he would have been in if we had never enacted the law of the last session of Congress on that subject, and under the Spooner law and under the treaty which is the supreme law of the land he would find himself possessed of full power to execute the will of the country in locating and excavating that canal without any embarrassment. I am not quite sure now that it is necessary to pass any legislation on the subject, but let the President go along as if we had never attempted to interfere there and exercise the powers that were conferred upon him by the Spooner law and that treaty, and I believe they are ample for the purpose.

Now, I wish to refer to the provisions of the Spooner law to show how far we, by anticipation, had arranged for the government of this zone—not so much for the government of the zone as for the digging of the canal in the zone, which included, of course, the right to govern it. In the second section of that act the President is authorized to obtain control on behalf of the United States from the Government of Colombia. I make no point about that language now. The time for making that point has passed entirely, and we have got a perfect title to that land. The second section of the act provides:

That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than 6 miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be

agreed upon thereon as may be necessary to enforce such rules and regulations.

It is impossible to give much expansion by additional legislation to the powers conferred upon the President in that clause of the Spooner law. There it stands now in full force and operation, so that if we were to make no other legislation at all we have already provided for the President to exercise all of these powers, and we would find difficulty in amplifying his powers beyond the description given in that statute.

I come now, Mr. President, to the machinery through which the President was to construct this canal. It was all provided in advance, and that has not been repealed or changed in any way:

The President shall cause the said Isthmian Canal Commission to make such surveys as may be necessary for said canal and harbors to be made, and in making such surveys and in the construction of said canal may employ such persons as he may deem necessary, and may fix their compensation.

That is extant as the law, that is the law in force. What more power does anybody want to give the President than that? Then I turn to section 7:

SEC. 7. That to enable the President to construct the canal and works appurtenant thereto as provided in this act, there is hereby created the Isthmian Canal Commission, the same to be composed of seven members, who shall be nominated and appointed by the President, by and with the advice and consent of the Senate, and who shall serve until the completion of said canal unless sooner removed by the President, and one of whom shall be named as the chairman of said Commission.

There a complete Commission is organized. It is a body that I do not know exactly how to denominate—whether it is a bureau of the Government or whether it is a peculiar body that must consist of seven members, no more and no less, that can not act except as a body, and that it holds its tenure during good behavior, we may say. There is only one limitation put upon the tenure of office—that is, until the canal is completed. Nobody can remove these gentlemen, or any of them, except the President, and he has full power of removal.

Now here is a case not heretofore provided for—an anomalous situation—a Commission that has no parallel that I know of in the legislation of the country, a Commission upon whom, as will be seen in a moment, great and unusual powers are conferred. Whether it was the intention of Congress to say that the Commission should always be full and that they should act as a unit, or whether they are subjected to the democratic rule of majority control, is more than I am able to state from this statute or from any precedent that is found in the history of the legislation of the United States. But there it is in the statute, with that long tenure of office—that uncertain tenure of office—dependent upon good behavior in the President's estimation, no matter what other people might think about them, independent of impeachment and dependent only upon the time when the canal is completed. It is a position more particularly sheltered against any action of Congress than any commission or office that I know of—an office during good behavior and for life. I should be very happy, if those gentlemen want to live so long, that their existence shall be protracted until that canal is completed, for every one of them will be fifty years older than he is to-day before he ever sees its completion.

I turn now to the powers of the Commission. I maintain, Mr. President, that no power has been given to the Commission in any sense whatever that imposes the slightest degree of restraint upon the power of the President. Others interpret it differently, and the language is so uncertain that differences of interpretation are quite reasonable, but there is no power given this Commission that overrides the will of the President in my judgment.

Of the seven members of said Commission, at least four of them shall be persons learned and skilled in the science of engineering—

That is a qualification that the President and the Senate, of course, must pass upon only when the question of confirmation comes up—

and of the four, at least one shall be an officer of the United States Army—

That looked to me like a job when the amendment was offered—

and at least one other shall be an officer of the United States Navy.

I am quite sure that was a job; but as to the army officer, I desire to say, Mr. President, that I have known General Davis for many years and have known him intimately. His private record corresponds precisely with his public record, which has been one of unfailing duty, great intelligence, firmness, courage, manliness, and wisdom, and when I say it is a job I mean——

Mr. SPOONER. If the Senator will pardon me just a moment——

Mr. MORGAN. Yes.

Mr. SPOONER. The Senator will remember that the provision for the Commission was no part of the amendment which I offered, but was offered on the floor and adopted.

Mr. MORGAN. Mr. President, the Senator from Wisconsin [Mr. SPOONER] devised a very able plan of settlement for this canal question, a very just and a very honorable plan, which at the time I very much regretted to see loaded down and handicapped by the introduction of this Commission, which, from the beginning, I thought I foresaw, and I now do see, has been one of the elements of embarrassment, if not of destruction, of this work. More than that, this Canal Commission, in my judgment formed at the time, was run into this bill for the purpose of gaining strength for it. I never could see any other use for it. Since that time I have seen many reasons why it should be discontinued. It had no legitimate place in the law. It was one of the devices of legislation oftentimes resorted to, as to which I have no particular criticism, for the purpose of adding strength to a bill that otherwise would have gone down.

I quote further:

The said officers respectively being either upon the active or the retired list of the Army or of the Navy. Said commissioners shall each receive such compensation as the President shall prescribe until the same shall have been otherwise fixed by the Congress.

Well, the President prescribes the compensation. He can put it at $100,000 a year just as easy as he can at $10,000. I do not expect him to do such a thing as that, but a very remarkable feature of the compensation he has prescribed is that these gentlemen are to receive a fixed salary of a thousand dollars a month each—$12,000 a year—and they are to be paid a bonus or a reward of $15 a day for every day they consent to stay on the Isthmus. Considering their readiness for receiving bicompensation out of railroad dividends and the like of that, I wonder they have not taken their lives in their hands and stayed there all the time at $15 a day. But we do not seem to have been able to get them to stay there even with that bonus of $15 a day. That, I suppose, is on account of the climate.

Mr. OVERMAN. Or the mosquitoes.

Mr. MORGAN. Yes, they are probably waiting until the mosquitoes are all killed, and I am afraid that will be a good long time. [Laughter.] Mosquitoes, Mr. President, have been the invidious enemy and foe of canal work in the Isthmus at Panama for more than a half century. The first mosquitoes we encountered down there were the Mosquito Indians [laughter] that Great Britain colonized and set up into a government and opposed us and prevented us from going there under a sad relaxation of spirit as to our rights.

I will now quote the real cause of embarrassment in the Spooner law that the President complains about:

In addition to the members of said Isthmian Canal Commission, the President is hereby authorized through said Commission to employ in said service any of the engineers of the United States Army at his discretion, and likewise to employ any engineers in civil life, at his discretion, and any other persons necessary for the proper and expeditious prosecution of said work.

That important function conferred upon the Commissioners is exercised by the President through the Commission; that is, the employment named, of engineers, laborers, and the like of that, not detailed from the Army. I never considered that that provision in this law gave to the Commissioners the right of superintendence or control, but that the President of the United States was to locate and build the canal through the Commission. It is an advisory body and can be made an executive body by direction of the President, as to work in progress in locating or constructing the canal, but the President has no right to require them to perform, individually, any work or duty that is not included in their duty as Commissioners. Their duties as Commissioners can not be parceled out and assigned to them as Commissioners. They comprise a Commission, and can only be required by the President to act as Commissioners. It is quite uncertain whether the Commission can require its members to perform separate executive duties. There is embarrassing uncertainty, if not danger, in these indefinite provisions.

The President was to employ them, perhaps, because he did not have time to attend to such matters, and because it was supposed that, being selected from the body of the country, they would have a general knowledge of labor in all its conditions, and of engineers, contractors, and the like. It is true, then, that the President has the discretionary control of such matters as employments. He had the right to dismiss anybody that they employ.

The compensation of all such engineers and other persons employed under this act shall be fixed by said Commission, subject to the approval of the President.

Now, there the Commission move up a step and get the important power of employing and fixing the compensation of these employees, subject to the approval of the President. This and the power to employ "any other persons necessary" for work on the canal includes constructors. The commissioners have no authority at all in any respect or under any conditions or circumstances to override the President's power or prescribe how he shall exercise it.

Said Commission shall in all matters be subject to the direction and control of the President, and shall make to the President annually and at such other periods as may be required, either by law or by the order of the President, full and complete reports, etc.

Can language broader than that be selected to define the subordination of this Commission to the will of the President? They "shall in all matters be subject to the direction and control of the President." They may go on and locate a line of canal, but if the President says, "I am informed by Mr. So-and-so, in whom I have more faith than I have in you, that that canal, or that dam, ought not to be located at that particular place; please strike that out of your programme, and go and locate at some other place," they would have to obey.

What I am trying to show is that the power of the President in all of these cases is absolutely supreme; that the responsibility rests upon him, and can not be shifted under any circumstances or conditions, and I am glad of that. I do not imagine that the President in the least regrets this burdensome trust.

I have now enumerated so far as I know—and I am quite sure I am correct about it—every power these Commissioners possess. If they should be abolished, what would be in the way of the President of the United States finding a set of men not in commission, not playing at legislation and the like of that, but doing actual work, to guide, direct, and inform his judgment as to what ought to be done? Would not that be more sensible than for the Senate of the United States or the Congress of the United States to select the individual men who should be employed in this work?

I regard this Commission, so far as its judicial, legislative, and executive powers are concerned, as being quite a small matter in this canal legislation. I believe the House is right in striking out that handicap, that incubus upon the power of the President, which has no other effect than merely to confuse the President and to retard operations. I believe the House is right about it. In the Senate it has been passed over in a perfunctory way, and no vote taken upon the striking out of this very important measure—section 5 of the House bill—by yeas and nays, or by a division.

We are aware from the debates that come to us from the House that the leading ground of action on this bill is that taken in section 5. It is to get rid of that Commission that the House has labored anxiously and earnestly and for a long time in getting at the facts in regard to this Commission. I notice that they have had hearings there before the Committee on Interstate and Foreign Commerce day after day, which have found their way into the newspapers. Some of those results were stated by the Hon. Mr. MANN in a very able speech, in which he expounded this bill in the other House. I would like to make a few quotations from that speech in order to show the anxiety of the House upon this question, and if the time of the Senate would admit of proper discussion.

I hope that Senators will examine the statistics and other facts stated in that speech before this bill is finally disposed of, if there should be a conference of the Houses on this bill.

Mr. President, I have offered this amendment for the purpose of preventing any possible breakdown in this canal. I do not want the President of the United States and the party that has been sustaining him—I do not speak of political parties; I am talking about the gentlemen who are anxious to build the canal at Panama, where it can not be built, and have been so anxious to remove it from Nicaragua, where it can be built—I want them now to understand that there is to be no dropping of this "hot potato" because blame can be laid upon Congress for not having made proper provision by law for the conduct of this work. I want a canal to be built, if it can be built. I do not want one hundred million or two hundred million dollars spent upon it uselessly and thrown away.

If these gentlemen come up against natural obstructions there that they can not surmount, it is their duty to find them out, to say so, and let the Government of the United States abandon the transisthmian canal or else find some other place to build one, at San Blas or Nicaragua or somewhere else. We can not afford to be trifling with this subject and making experiment after experiment at the enormous cost that is estimated, even of one hundred or two hundred million dollars. We want the responsibility placed right where we undertook to place it at first—upon the President. We want to give him every possible power to conduct the work and to have perfect control of it; we want to give him every dollar of money that he may require; but if he concludes that he can not build it, the Congress of the United States ought not to leave the plea in his possession or in his reach that, "You obstructed me by putting a Commission here that I can not manage, who set up rights and powers that I can not admit, and in the conflict of powers and duties between me and the Commissioners I have been unable to do anything. I have had to suspend operations; my ideas about building the canal run in one direction and those of the Commissioners run in another." I do not want to leave that responsibility divided or that power of the President in the least degree in question.

I ask the Secretary to read my amendment, proposed as section 5.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read as follows:

SEC. 5. That if the President, in the exercise of powers conferred upon him by law, shall remove all or any of the members of the Isthmian Canal Commission, or if any of said offices shall become vacant for any cause, no appointments shall be made to fill such vacancies during a recess of Congress: *Provided*, That nothing contained in this act or in any other law shall in any wise delay, hinder, or prevent the President in the full exercise of the duty and power to proceed with the work of constructing the Panama Canal or in respect of any duty or power connected therewith.

Mr. MORGAN. Mr. President, we are not perhaps informed officially of all the facts that embarrass the President. I do not know that that is necessary; but the President has sent a message to Congress, in which he suggests that that Commission ought to be reduced at least to five, preferably to three, on the ground of want of flexibility. I do not know that I understand exactly what "flexibility" means in that connection—whether he would have less trouble in pursuading them to his views or in acting without them. But at all events, the President is dissatisfied with the Commission of seven. He has found that it will not work, and we all know that it does not work to the advantage of the canal. Five, he thinks, he might get along with, but he would prefer three. I prefer none. Let the President have all the powers that are conferred upon him by the Spooner law. When we passed that law we were not afraid to confer powers upon the President, and I would rather risk him now than any commission that he could name. There ought to be some reasons stated for this situation.

We have got some members on that Commission who were on the previous Commission, and they supposed that they fully understood the situation at Panama and advised Congress to the present course. The Senate will indulge me for a few minutes, I am quite sure, in recurring to these matters, as I have been compelled to make myself somewhat familiar with this question; not altogether so—I am not an engineer, and I have no pretensions whatever to any engineering skill or knowledge—but I know facts when they are established, and I want to state a few of those facts to the Senate, or rather to restate them, in order that we may have a fair apprehension of what we are doing.

When the Spooner law was under discussion we acted upon the proposition of the Isthmian Canal Commission, composed of very able men—all of them able men. That Commission had previously on two occasions reported in favor of the Nicaragua route. They not only reported in favor of it, but gave full working estimates of the work, estimating every particular branch of it. They made two reports—one report to President Roosevelt, after he acceded to the Presidency, and the next one before that was made to President McKinley.

I will not delay the Senate to refer to the action taken by either of those Presidents in regard to this matter. The Commission had made their report recommending the Nicaragua route to President McKinley and in another report also to President Roosevelt. They suggested that the proposition was made from the New Panama Canal Company that they would drop their price—the estimated and appraised price for their property of $109,000,000—down to $40,000,000 at a single fall, if we would accept the bait, take the proposition, swallow the hook, and permit them to drag us ashore. Our commissioners, I think, were very much deceived by this bauble, this "good trade," as it was supposed to be, which was offered to us, but which I consider "a gold brick." I think they were badly deceived about it. But, at all events, they called into council a lawyer of the New Panama Canal Company to state to them the law of the situation, and nobody else that I have ever heard of was admitted to that conference. They closed the door behind this council, and they came out with the proposition that it was $5,000,000 cheaper to build the Panama Canal than it was to build the Nicaragua Canal, and Congress concluded it was a good opportunity to make $5,000,000 and accepted the proposition.

Now, on what basis was that second report made? The French engineers of the old company and the new company had

gone over this ground. The French engineers had concluded to abandon the sea-level project as being impracticable, not because they could not dig it out with machinery, remove the earth, and get down 45 feet below the level of the sea. It was not for that reason that the canal plan was changed, but for the reason that they did not believe it rested in human power, at any reasonable cost to say the least of it, to control the waters of the Chagres River and to prevent that torrential stream from pouring its floods into the channel of the canal and destroying it at its convenience, and also making the navigation of that channel extremely dangerous. They all said that.

The French engineers had made surveys, and they had concluded to abandon the sea-level canal. It broke old man Lesseps's heart and he went to his grave. He did not die because they convicted him of a penitentiary offense, but he died because he was heartbroken at the fact that his scheme, the grand supplementary scheme to the Suez Canal, had failed. When he died he did not know that he had been convicted of the crime of robbing the people of France.

These gentlemen never ran a line a quarter of a mile long on that Isthmus. They had a corps of engineers. They were in office two years and eight months. During that time they spent eighteen days on the Isthmus. They adopted the French canal survey, and in the estimate of $40,000,000 that we were to pay for that work these surveys were put in at two million and about four hundred thousand dollars.

Their attention was called at the time to the fact that perhaps we never would have any use for those plans, but they thought it was a just compliment to the French engineers to have them paid for. We paid for them. We got them. And when Wallace came to test those French surveys he threw the whole thing away. So he commenced de novo and worked from the ground up. And he is now making the necessary surveys for which we have paid $2,400,000.

Now, upon those surveys, and in connection with them, our Commissioners commenced boring holes across what is called a geological gulch or valley, a V-shaped valley worn down into the rock—a fissure created by an earthquake or some volcanic action. It is a long valley, which evidently commences at the point where the Chagres River takes its bend after passing Samboa and goes out north to the Caribbean Sea. Its course before that time was west.

At that place the Frenchmen had bored holes in the earth, and they never got to any solid continuous rock at all. They bored a distance of perhaps a mile farther up the stream than our men did. Our men found a ridge coming from the right and left of the Chagres River, divided by a distance of something over a quarter of a mile, and in the spurs of that ridge there jutted out rock, and they concluded that a solid stratum of rock was underneath; that the water had washed off the surface, and that by boring between those points they would find a rock foundation for a dam.

Now they all admit—the French engineers and the American engineers, and every other engineer who has ever touched the subject—that a dam at that place is the key of the canal; that if a dam can not be safely located there there can be no lock canal. It is the key. You can not put too much emphasis upon that fact.

Our Isthmian Canal Commission went to boring at Bohio. Now, here comes in the story told at that time by the Commissioners, but no attention was paid to it. When they bored for the Conchuda dam on the San Juan River on the Nicaraguan route they had diamond drills, and when they drilled down they got into the solid rock, and when they struck a bowlder and were not satisfied that it was the main body of the rock they went through it, and they located the holes that they bored at the Conchuda dam in solid rock as the basis and foundation of the dam on the San Juan River.

When they went down to Panama they did not use diamond drills. No diamond drill was ever introduced there. They would run the augers down and when they would strike a bowlder it was accepted as solid rock. They stopped and made a report, summing up the results of all these borings across the Chagres River between those points of rock. The borings were about 50 or 60 feet apart, and when they got the results together they said that the deepest distance to rock across the Chagres River at that point was 128 feet. They made that report. I examined every one of them under oath, not that I suspected them, but an oath is a mighty good guaranty of a man's being particular.

Now, 128 feet was the deepest rock they found. Wallace went there on the same ground. He bored down with diamond drills, and when he struck a bowlder he went through it, and the deepest boring that Wallace made there before he struck solid rock is 168 feet, 40 feet deeper than what is stated in the report upon which the Senate acted when it adopted the Panama route and committed this country to an expenditure of untold millions, which our children will live to struggle under after we have passed away.

If Wallace had made those borings a lock canal, with a dam at Bohio, would never have been adopted and the Spooner bill would never have become a law.

That was a deception. I do not say it was a fraud. They believed it. No doubt they did. They are honorable gentlemen, but they had not used the necessary means of ascertaining the truth. Senator Harris, who is an engineer, called their attention to it in frequent instances in these reports I have here now, but which I will not take the time of the Senate to read. He called their attention to the fact that they did not have diamond drills there and, therefore, their statements in respect to the depth of the solid rock there were not reliable. They persisted that they had ascertained the facts to their entire satisfaction; and it was upon those facts that they predicated the conjecture; for it was never more than a conjecture, that they could build a dam at Bohio that would hold the waters of the Chagres River and make a lake 18 miles long, that would surmount 80 to 90 feet of elevation in Culebra and Emperador cuts and would require five locks, two of them situated one immediately above the other to lift 80 feet, 40 feet to the lock, the biggest locks ever heard of on this earth. But still they said they could do it.

There went out an impression, there went out the boast—vain it is, and we had better cease our boasting—that there is nothing an American engineer can not accomplish. We have seen what an American engineer has accomplished, or a body of them, in committing the Congress of the United States to a proposition that never would have been voted if the truth had been known. They have committed us to a tangle of difficulties with which we are struggling and floundering to-day, and trying to help out all we know how, by changing our statutes to accommodate the powers of the President to the work, that he may prosecute it with more vigor and effectiveness. I have no doubt that he will do all that can be done, and I am for giving him a free hand and all the money the people can spare in his desperate fight with the forces of nature.

My friend on my left has suggested to me that the time is short. Well, our time is very short, but as compared with the day on which the canal will be completed it is extremely short. I am nothing but a plain, common-sense, country-raised man. I have had no education of a scientific sort. I did not get enough education at school to properly command my mother tongue, but I have some common sense and mother wit, and I have no more idea that that canal will ever be built at Panama than that I can be transformed into an angel and be carried up into the sky. The struggle and the wrestle are with nature. The powers of nature there interposed are sufficient to prevent it.

I will call your attention to a fact. I have described this geological V that Mr. Wallace has proved to be a hundred and eighty-three feet below the sea level at its bottom, and the entire line of borings is yet incomplete.

The man who bored the holes there a year or two ago sent me a report of what had occurred, and with it photographs and statements of different kinds. At the very bottom of that V—that great geological gulch, which is perhaps 20 or 25 miles long—he found logs. Then above that he would find superimposed a layer of clay, then of sand, then of gravel, then of bowlders, then of soil—swamp soil—and so on, going through and through and through, until he got to the top, the banks of the Chagres River running along, on the top of the whole map, just as the Mississippi forms banks as it carries its flood waters to the sea and the logs along with it. It was formed in the same way. That geological gulch has this very peculiar condition.

If you were to drive a pipe down through the Capitol grounds to the level of the Potomac River, no water would rise in it out of the Potomac River, and the water would not rise and fall in that pipe corresponding to the rise and fall of the Potomac River, so that when the river was full the pipe would be full and when the river was low the pipe would be low. But such a test was tried there, at Bohio, and some hundreds of yards away from the banks of the Chagres River they drove down pipes. Now, for what purpose? To ascertain whether or not all of this soil in that geological gulch was permeated with water and whether it got its supply of water from the Chagres River. When they got their pipes down, they found that when there was a rise in the Chagres River the water in the pipe would rise correspondingly. When the Chagres River would shrink away the water in the pipes would shrink away correspondingly. What did that mean? That this whole mass of matter—logs, bowlders, clay, sand, gravel, whatever it might be—in this great geological gulch had no stratification.

Mr. President and gentlemen, there is a mass of matter entirely permeated with water, that is water-soaked from the Chagres River every day in the year like a sponge, and in the dryest season of the year there is more water underground in that geological gulch than there is running in the channel of the Chagres River. When you put a dam there, the Bohio dam—the only place where you can put it—what pressure has it to bear in addition to the flood tides of the Chagres River, of which there is a record that it has risen 46 feet in twelve hours? In addition to that, here is this vast mass of water-soaked earth pressing against that dam. As a common-sense man, I say it does not rest in the power or genius of man to build a dam there that will stay. It is like building a dam across one of these ice rivers in the North, up in the arctic region. If you put a dam there, the river is continually in motion, perhaps going a half inch in a year, but the dam goes along with it. You can not anchor it. It moves as a common mass.

You may sit down and study this proposition, and you can not possibly arrive at a conclusion that a dam can be maintained at Bohio that will sustain the weight of the Chagres River and the necessary flotation of ships through a canal 90 feet, 60 feet, or 30 feet above sea level. There is no chance ever to get a canal there that will stay unless you dig it down to sea level, and then you can not make it stay, because the Chagres River will take it away, and what the Chagres River does not take away the slidings will. The walls of the canal, from 250 to 300 feet deep, continually sliding down their masses of earth, will cover everything. I will not take the time of the Senate unnecessarily, but I beg you to read the accounts that come from there. Get these statements before the committee of the House of Representatives and read them. See if I am not right about it. I can not stop to state the information I have on that subject, but it is there.

There are now at Panama along the line of the canal, covered with earth, dump carts and things of that sort which have been covered up by the landslides, and the railroad ties and the wheels of the dump carts are sticking out like so many bones of some great animal. Colonel Ernst testified before the Senate committee in March, 1902, as follows:

The CHAIRMAN. Now, we will turn to Bohio. When you got there you say the French had already made borings, but had never touched the rock at all, as I understand it.
Colonel ERNST. Not in the deep part of the valley.
The CHAIRMAN. Had they made any borings?
Colonel ERNST. The number that they furnished to us was 21. I say 21. I would like to refresh my memory as to numbers—yes, 21.
The CHAIRMAN. At Bohio you encountered what all of you term a geological valley. Have you a judgment that you are willing to express in regard to the circumstances under which that valley originated, as to what caused it?
Colonel ERNST. I have no theory on the subject.
The CHAIRMAN. You don't know whether it is a fissure caused by some convulsion of nature, or whether it was worked out by the attrition of water?
Colonel ERNST. No, sir.
The CHAIRMAN. Most likely it would be by water, would it not?
Colonel ERNST. Well, I don't know. The whole country is volcanic. I have a shark's tooth that came out of the Culebra cut 140 feet down.
The CHAIRMAN. Now, it might have been there by some earthquake or volcanic action?
Colonel ERNST. Yes. I do not know what it is.
The CHAIRMAN. But it is a very deep, geological valley?
Colonel ERNST. Yes.
The CHAIRMAN. And narrow?
Colonel ERNST. Yes.
The CHAIRMAN. And it is filled up with various strata of material that has gone into it. Now, what has carried that material into that cut except water?

I am timid about it. I repeat my belief that a canal can never be built and maintained there, but that will not stop me for one moment from voting the money to make the experiment. The Congress has decided upon it. The President is there under our orders, by his agents, trying to dig the canal, and no matter what wrong has been done, or may come hereafter, makes no difference with respect to our duty. My duty is to vote every dollar needed or required, and to give the President of the United States all the powers that are necessary in order that this work may be carried on.

Mr. President, there is a great deal in my recollection of this subject which to me is very bitter indeed, not that I ever pretended to set up my judgment against any other informed person; but when all the engineers who have ever surveyed the Nicaragua route have pronounced in favor of it as a practicable, feasible, certain scheme, in a healthful country, a beautiful country, where the Almighty has placed the water to supply the canal on the crest and we have nothing to do but let it down from either side—when conditions of that sort are presented I can not understand what reasons influence men to give up such a route and go to a place where there is nothing stronger than a mere probability, and when the difficulties we have to encounter are stronger than the strongest assurances of success. It has been to me a source of regret that there has been a want of time amongst these great men by whom I am surrounded to sit down and study out this proposition according to the testimony of the best engineers in the world and come to a satisfactory decision.

But, Mr. President, there has been a great deal of pressure about this matter. I want to say to this honorable Senate now that I hold myself ready, whenever a proper time and proper occasion may present, to establish, as I am sure I can do to the satisfaction of any reasonable man, the fact that the proposition to carry the canal to Panama was the result of a combination between the transcontinental railroads and some leading gentlemen and capitalists in the United States. They found the public opinion in favor of an isthmian canal so very powerful that they concluded they would get the Government to adopt the Panama route, because they did not believe the canal could ever be built there. I hold myself ready to make true that proposition upon satisfactory proof whenever the Senate of the United States may demand. I am not going to mention a fact or man now, but I have the proof to show it.

That will make no difference in my course—not a particle. I am for the Panama Canal, now that the Congress of the United States has made a decree that it shall go there, and there is nothing that I can clear out of the way of the President of the United States to enable him to build the canal that I will not cheerfully vote to remove. But I will never consent to put the Congress or the people of the United States in the category of keeping the President loaded down with a Commission of which he is tired, and as to which, whenever it may so happen that he finds he can not build the canal, he will be justified in saying to the Congress of the United States: "You have handicapped me with the Spooner law and with your other legislation in such a way that I had not any chance to construct the canal, and the responsibility is on Congress."

I do not want that to occur. I do not predict that it will occur. I make no prediction about it, but in looking as far as I am able to look into the future, I want to prevent everything of this kind that is possible. Let that party or that man who has rightfully or has assumed the responsibility to build the canal have the power along with the responsibility. Let the American people understand that there is responsibility at the back of this canal, and let us not divide it. Do not let them ever be told that a canal could not be built there because of differences between the President and a commission that the Congress of the United States determined to hold there against his will. The House has struck out the commission entirely. It has gone beyond the request of the President. It has swept it out entirely. I agree with the House. I never have believed in a canal commission for building the canal. I do not believe in it now. I will oppose it anywhere and everywhere that I get a chance to do it. I think perhaps I have explained this matter as far as I need go, and I will take my seat.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Alabama [Mr. MORGAN].

The amendment was rejected.

Mr. TELLER. I have an amendment to offer. It comes in on page 7, at the end of line 12. It is agreeable, I understand, to the chairman to have the amendment inserted.

The PRESIDENT pro tempore. The Senator from Colorado offers an amendment, which will be stated.

The SECRETARY. After the word "to," at the end of line 12 on page 7, it is proposed to insert the following:

Purchase any and all of said stock not now owned by the United States at such price as he may consider proper, and in case he shall fail to purchase such stock or any part thereof he is hereby authorized to.

Mr. KITTREDGE. Mr. President, that is acceptable to the committee.

Mr. BAILEY. A word on the amendment, Mr. President. I think it undoubtedly makes the bill better than it would otherwise be, because it provides for an effort to purchase in the way usual between a man who has something that he wants to sell and another man who wants to buy it; and therefore I am pleased that the committee has accepted the amendment proposed by the Senator from Colorado.

But before this becomes the law, I want to say that in my judgment the Government has no power to condemn this stock if the holders of it refuse to sell it. I merely intimated an impression to that effect day before yesterday when this same matter was before the Senate, but the more I consider the question the more I am convinced that it is not within the power of the Government to condemn a citizen's property under these circumstances. I have no doubt that the Government has the same power to condemn the stock that it would have to condemn the physical property which the stock repre-

sents, but the objection to the exercise of the power of eminent domain in this instance is that no living man can allege and prove that the condemnation of these thousand shares is necessary for the proper execution and completion of the canal work.

The railroad may be, and doubtless is, necessary, and the Government could unquestionably, if it is necessary, condemn the physical property, no matter if the Government itself should happen to be one of its stockholders, holding a larger or a smaller number of its shares. But you are not trying to condemn the physical property. You are trying to condemn a small per cent of the stock.

The committee recognizes the necessity of alleging in the bill itself the use is a necessity to the Government. It is easy to make the allegation, but it will be exceedingly difficult, in my judgment, to make the proof. You go into the court, and the owners of the stock, who will be the defendants in the proceedings, will set up the fact that the Government now owns practically 69,000 shares of the stock, while they own practically a thousand; that the Government, by reason of its majority, can use, and is now using, the railroad for such purposes as it may choose; that their small ownership does not disable the Government in the appropriate and necessary use of the canal, and does not even interrupt the Government to the slightest degree in that use.

They say that they own the stock and all that they are entitled to is a proportion of the dividends. Shall the Government be heard to answer that because it must ship a large amount of material over there, even at a moderate charge the railroad will earn an enormous dividend for these private stockholders? The answer then is that the Government can reduce the freight charges; and the still more conclusive answer is that such contention makes it a question of profit to the private stockholders and not a question of the Government use.

I very seriously doubt if any court in this land will hold, under any allegation and proof that can be made in this case, that the necessities of the Government require the ownership of this small per cent of the stock.

But, Mr. President, I desire to suggest another anomaly in this connection. The Government acquired both the canal and the railroad for the same purpose—if they did not acquire the railroad for the purpose of constructing the canal then they ought not to have acquired it at all—and yet we are asked to present the remarkable anomaly of holding the canal as a sovereign and the railroad as a corporation.

Why not, Mr. President, acquire both properties, devoted to the same purpose, and hold them under the same right and title? If we own the canal as a sovereign, then surely we ought to own the railroad, which is necessary to complete the canal, in the same sovereign capacity.

Mr. MORGAN. May I suggest to the Senator that under the concession to the Panama Railroad Company at the end of ninety-nine years, which is now reduced to sixty-one years, the property reverts to Colombia absolutely with all its belongings, so that Colombia would have become the exclusive owner, as the United States will be the exclusive owner of that railroad under the stipulations of the concession, and it will revert to us in about sixty-one years after this date?

Mr. BAILEY. That strengthens my contention, and I thank the Senator from Alabama for that suggestion.

Mr. President, the whole truth of it is the Government is to be put in this awkward attitude because of some contracts that are supposed to exist between the Southern Pacific Railroad or a mail steamship company and this railroad corporation, and we had just as well now and here settle any controversy of that kind.

Mr. MORGAN. I will make another suggestion to the Senator. It is only an opinion, but I believe it is true that under the provision put in this bill a contract will be made or has been made and the contractors are known now.

Mr. BAILEY. Mr. President, I would accept any statement the Senator from Alabama would make as within his own knowledge. I hope, however, that we have not begun to legislate with reference to this canal work under a system of favoritism that must subject that great work to suspicion.

But, Mr. President, I see by a glance at the clock that to continue would carry the bill beyond to-day's session, and I merely content myself with declaring my belief as to the question of the power of the Government to condemn the stock, which can not be proved to be necessary to its use, and also with recording my protest against owning the canal and railroad under different titles.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Colorado [Mr. TELLER].

The amendment was agreed to.

Mr. McLAURIN. I have an amendment to offer, which is acceptable, I believe, to the committee.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. Strike out the following sentence in lines 5 and 6 on page 12, to wit:

> And said court is hereby authorized to enforce such order by proceedings as for contempt.

Mr. KITTREDGE. That amendment is acceptable to the committee, Mr. President.

The amendment was agreed to.

Mr. HEYBURN. I send to the desk an amendment, which I ask to have read.

The PRESIDENT pro tempore. The Senator from Idaho offers an amendment, which will be read.

The SECRETARY. It is proposed to amend by adding to the end of section 6, page 12, the following:

> When the title to said stock shall have been acquired by the United States, either as hereinbefore provided or in any other manner, it shall be competent for the Panama Railroad Company to convey to the United States for a nominal consideration all the property of every kind and character of said Panama Railroad Company and for the United States to receive such conveyance of said property; and, as soon thereafter as it may be done, proper proceedings shall be commenced and prosecuted to final decree in the court having jurisdiction thereof for the dissolution of the Panama Railroad Company and the proper release of all liability on the part of said corporation and of any and all officers and stockholders thereof on account of any claim of liability of any character for any act or failure to act on the part of such corporation.

Mr. HEYBURN. Mr. President——

Mr. KITTREDGE. I move to lay the amendment on the table.

Mr. HEYBURN. I understood that I had the floor. I had not yielded the floor. I rose to offer the amendment.

The PRESIDENT pro tempore. The Senator from Idaho had the floor for the purpose of offering his amendment. The Chair did not suppose the Senator had it for anything further.

Mr. HEYBURN. I did not intend to make any extended remarks, but I intend to suggest, in connection with offering the amendment, that I do not believe the Government of the United States ought to hold title to this railroad as a stockholder in a corporation, and I think that as a proper part of this proceeding for acquiring title through the means of acquiring the stock, the corporation being in the hands of the Government, it should be wound up under the laws of the State of New York, under which it exists, in accordance with the provisions of the statutes affecting that matter and the title should pass to the United States, either by deed made by the authority of this act or it should be wound up as provided by the statute of New York and the title pass, through the receiver, to the Government. I have offered the amendment in order that that question may be presented at this time.

The PRESIDENT pro tempore. The Senator from South Dakota moves to lay the amendment on the table.

The motion was agreed to.

The bill was reported to the Senate as amended.

The PRESIDENT pro tempore. Is there a wish for a separate vote on any amendment? The Chair hears no such request, and the vote will be taken on concurring in the amendments in gross.

The amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

INDIAN APPROPRIATION BILL.

Mr. STEWART. I move that the Senate proceed to the consideration of the Indian appropriation bill.

The motion was agreed to; and the Seante, as in Committee of the Whole, resumed the consideration of the bill (H. R. 17474) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1906, and for other purposes.

Mr. DIETRICH. I ask for the immediate consideration of House bill 18279.

Mr. STEWART. I think there is no time for that. I desire to give notice, as nothing of any consequence can now be done before the hour of the meeting of the court of impeachment, that immediately upon the adjournment of the court I shall ask the Senate to proceed with the consideration of the Indian appropriation bill. I hope Senators will be here and help to get it along.

CONVEYANCE OF CERTAIN NEBRASKA LANDS.

Mr. DIETRICH. I ask unanimous consent for the present consideration of the bill (H. R. 18279) to authorize the Secre-

tary of the Interior to accept the conveyance from the State of Nebraska of certain described lands and granting to said State other lands in lieu thereof, and for other purposes.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The bill was read; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to authorize the Secretary of the Interior to accept from the State of Nebraska a conveyance of all of that State's right, title, and interest in and to the northeast quarter of section 36, in township 4 north, of range 29 west of the sixth principal meridian, in the State of Nebraska, and provides that upon filing with the Secretary of the Interior a good and sufficient deed of conveyance of that tract, which deed shall be subject to the approval of the Secretary of the Interior, the State of Nebraska shall be entitled to select other surveyed unappropriated and unreserved lands of equal acreage within the State in lieu thereof, and the lands so selected shall be approved and certified to the State in the same manner as other indemnity school-land selections; and that when the title to that tract shall become vested in the United States the Secretary of the Interior shall cause to be reinstated the final homestead entry, No. 399, of Russell F. Loomis therefor, and thereafter to direct the issuance of patent to Russell F. Loomis for such lands.

Mr. BERRY. I wish to ask the Senator from Nebraska how many acres of land are involved in the bill?

Mr. DIETRICH. One hundred and sixty acres.

Mr. BERRY. It is all right.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

IMPEACHMENT OF JUDGE CHARLES SWAYNE.

The PRESIDENT pro tempore. The Senator from Connecticut [Mr. PLATT] will please take the chair, the hour of 1 o'clock, to which the Senate sitting as a court of impeachment adjourned, having been reached.

Mr. PLATT of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. PLATT of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives appeared, and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the respondent and his counsel are in attendance.

Judge Charles Swayne, accompanied by Mr. Higgins and Mr. Thurston, his counsel, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the proceedings of the last trial day will be read.

The Secretary read the Journal of the Senate sitting for the trial of impeachment of Charles Swayne Wednesday, February 22.

Mr. FAIRBANKS. Mr. President, I ask for the adoption of the order which I send to the desk.

The PRESIDING OFFICER. The Senator from Indiana asks for the adoption of an order, which will be read.

The Secretary read as follows:

Ordered, That the session of the Senate sitting this day in the trial of the impeachment of Charles Swayne shall continue until 6 o'clock, when a recess shall be taken until 8 o'clock, and the session shall be continued until 10 o'clock, unless otherwise ordered.

Mr. LODGE. Mr. President, am I correct in the understanding that the recess referred to there is the recess of the Senate sitting as a court simply?

Mr. FAIRBANKS. It is.

Mr. LODGE. I merely asked the question because a brief executive session of the Senate is very necessary, and I did not want to have that cut off.

Mr. FAIRBANKS. The order simply relates to the recess of the Senate sitting in the trial of the impeachment case.

The PRESIDING OFFICER. If there is any question about the order it can be read again by the Secretary. The Secretary will read it.

The Secretary again read the order, as follows:

Ordered, That the session of the Senate sitting this day in the trial of the impeachment of Charles Swayne shall continue until 6 o'clock, when a recess shall be taken until 8 o'clock, and the session shall be continued until 10 o'clock, unless otherwise ordered.

The PRESIDING OFFICER. The question is on agreeing to the proposed order.

The order was agreed to.

Mr. FAIRBANKS. Mr. President, I ask for the adoption of the following order.

The PRESIDING OFFICER. The order will be read.

The Secretary read as follows:

Ordered, That the managers be allowed five hours for the argument of the case, the time to be divided between them as they may agree, but the concluding oral argument shall be by one manager and shall not exceed one hour.

Ordered, That counsel for the respondent be allowed five hours for the argument of the case, the time to be divided between them as they may agree.

The PRESIDING OFFICER. Is the Senate ready for the question on agreeing to the order?

Mr. BATE. Is it debatable?

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BATE. Is it proper for us to say anything about that now? Is it a debatable proposition? For one, I wish to say that I object to this course of controlling the managers and counsel as to time. I want them to have their own time and to be the judge of it. I think we had better lay aside some other matters rather than push this too hurriedly. I do not think we ought to deny them sufficient time, and we ought to let them judge of this matter themselves and say how long they wish to speak, and let them make it known and let us conform to it.

The PRESIDING OFFICER. The question is on agreeing to the order.

The order was agreed to.

Mr. Manager PALMER. Mr. President, while this subject is under consideration, I make the following request——

Mr. BACON. I should like to make an inquiry relating to the order which was just passed. I am perfectly content that the order which has just been passed shall stand if the distribution of time is agreeable to the managers. If, however, they desire to occupy their time in different proportions—for instance, as to the length of time to be consumed in the concluding argument—I think their wishes ought to be consulted in that matter. I do not know whether the order as to that is agreeable to them. If it is, of course it is all right with me.

Mr. Manager PALMER. Mr. President, I will say that we do desire to make a little different allotment of the time. We wish to have the closing argument a little longer than an hour, and we expect to give the gentleman who closes the case a little more time. I suppose it will make no difference to the Senate as long as we do not take up more than the five hours.

Mr. BACON. I then move a reconsideration of the vote by which the order was agreed to, that the desire of the managers in that regard may be complied with. They do not desire, as I understand, any additional time, but they do desire some little different arrangement as to the time which shall be occupied in closing.

Mr. Manager PALMER. That is right.

Mr. BACON. Certainly they ought to have that right.

The PRESIDING OFFICER. The Senator from Georgia moves to reconsider the vote by which the order was agreed to. The order will be read.

The Secretary read the order, as follows:

Ordered, That the managers be allowed five hours for the argument of the case, the time to be divided between them as they may agree, but the concluding oral argument shall be by one manager and shall not exceed one hour.

Ordered, That counsel for the respondent be allowed five hours for the argument of the case, the time to be divided between them as they may agree.

The PRESIDING OFFICER. Will the Senate reconsider the vote by which the order was adopted?

The motion to reconsider was agreed to.

Mr. BACON. Now, I should like to have the Presiding Officer ascertain what is the desire of the managers as to the length of time which shall be occupied in the concluding argument.

Mr. Manager PALMER. We desire to have one hour and forty minutes for the concluding argument, and we will take the forty minutes off the time of those gentlemen who speak before the gentleman who concludes takes the floor.

The PRESIDING OFFICER. The Senator from Georgia moves that the order be amended by saying "shall not exceed one hour and forty minutes" instead of "shall not exceed one hour."

Mr. BACON. The one hour and forty minutes, as stated by the honorable manager, to be deducted from the entire time.

Mr. HALE. It does not increase the entire time?

Mr. BACON. It does not affect the limit of five hours.

Mr. HALE. And it is for the convenience of the managers?

Mr. FAIRBANKS. I see no objection to the amendment, if the parties to the case do not object.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The order as amended was agreed to.

The PRESIDING OFFICER. The managers ask that it may be ordered by the Senate that any of the managers or counsel for the respondent having all or any portion of his argument in manuscript may deliver a copy of the same to the Reporter, and any portion thereof, which for lack of time or to save the time of the Senate the managers or counsel shall omit to deliver or read, shall be incorporated by the Reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion.

Will the Senate agree to this request on the part of the managers?

Mr. TELLER. Mr. President, it seems to me that we ought to know what the printed argument is. We have not been in the habit in this body of giving leave to print speeches or parts of speeches or undelivered speeches. I think myself that it is an objectionable practice.

Mr. OVERMAN. We printed an argument yesterday, the brief of counsel on the other side, taking up forty or fifty pages, I think.

Mr. BACON. It is in the RECORD this morning.

Mr. OVERMAN. It is in the RECORD this morning.

Mr. TELLER. We may have done something unusual yesterday. My attention was not called to it. The presentation of a brief for our consideration when a case is pending is very different from an argument which goes into the RECORD without being delivered, and we have no means of seeing it before we shall be called upon to dispose of the case. I think the part of the request, so far as extending in the RECORD the undelivered part of a written argument is concerned, is very objectionable.

Mr. HIGGINS. On behalf of the respondent we are very reluctant to interpose any objection to any request made by the learned managers, but we can not forget that this is not a legislative, but is a judicial proceeding, and we do not think that it is consistent with our duty to the case to permit anything to be said that is not said in our hearing. To be sure, our right to reply is gone when we have concluded, but anything that may be said is subject to interruption by us in bringing it before the court, and to let something go in that we might not know what it is is contrary to all experience in the trial of causes. Therefore we feel we ought to object.

Mr. HALE. I hope the Senator from Colorado [Mr. TELLER] will withdraw his objection. While in the Senate we have a general rule against the printing of speeches, I can conceive of no trouble that will arise here and no difficulty, either, in the Senate understanding the case as presented provided some of it is printed without being read, nor can I conceive that the learned counsel for the defense will lose any real right by the Senate agreeing to this proposal on the part of the managers. It curtails time and gives an opportunity of a vote being reached at a comparatively early date—a consummation in which we are all interested. I hope, under these conditions, the Senator from Colorado will not insist on his objection; but should it be insisted upon, then I hope the Senate will grant the request of the managers.

Mr. HIGGINS. One word, Mr. President. If it is printed before respondent's counsel come to reply, we have no objection, but we do want to have a chance to reply.

Mr. Manager PALMER. If I may be allowed a word, Mr. President, I wish to explain the reason why we ask for this privilege. We have made no objection to curtailing the time, though this is the first time in the history of impeachment trials where the time of the managers has been curtailed. To be sure, the rule of the Senate provides that a case shall be closed by two managers, but there has never been any limit of time. We have consented to curtail the time of the gentlemen who are to speak in this case so that some of them shall have forty-five, some fifty, and some sixty minutes. Of course they will not be able to go over the case and do themselves or the case justice in that length of time. Their arguments can be printed in the RECORD and can be read afterwards by anybody who desires to read them.

Again, it was ordered by the Senate the other day that a brief on the part of the counsel for respondent should be printed, and a brief of forty-eight pages was printed about ten days ago, but we never got a chance to look at it until this morning, when it was printed in the RECORD. That brief pertains to jurisdictional affairs, and it is particularly desired to print a brief of the law of the case to meet the brief on the part of the gentlemen on the other side; and I think it comes with mighty poor grace for them to object.

Mr. TELLER. Mr. President, I do not desire to cut off anybody who has not had a fair opportunity to present his views on this question. I only wanted to observe the usual practice of the Senate. I do not know that this is a case different from any other. I do not make an objection to its consideration now. The Senate can take a vote on it, or I will withdraw my objection in order to save the time of the Senate.

The PRESIDING OFFICER. Does the Presiding Officer understand that the objection is withdrawn?

Mr. TELLER. I withdraw it in the interest of progress.

Mr. HIGGINS. Mr. President, we do not object, and would not object, to any argument being printed, instead of being made orally, except that we think it is just to us to have it presented and printed before we are called upon to answer it. That was the reason that upon yesterday, at the earliest possible date, we presented our argument on the question of jurisdiction. If the arguments that can not be delivered will be presented and put into the case and printed before our concluding argument in the case, we have not the slightest objection.

Mr. LODGE. Mr. President, I hope, in the interest of the public business, that the request of the managers, which seems eminently reasonable, will be granted without hesitation. The arguments that are not delivered will not fall upon the ears of the Senate before they vote. I do not think there can be any injustice done to anybody, but I do think the time has come when the public business should be considered. The managers have shown themselves most desirous to consult the public business, and I sincerely hope their request will be granted.

Mr. MALLORY. Mr. President, I may misunderstand the proposition, but, as I do understand it, it is that the arguments that are not made before this body sitting on the trial of this case, which will not have been heard by any member of this body, will be subsequently printed as a part of the arguments delivered in this body. I should like to inquire of the Chair if that is the proposition? If it is, I am opposed to it, and object to it.

The PRESIDING OFFICER. The request is this:

That any of the managers or counsel for respondent having all or any portion of his argument in manuscript, may deliver a copy of the same to the reporter, and any portion thereof which for lack of time or to save the time of the Senate the managers or counsel shall omit to deliver or read shall be incorporated by the reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion.

Mr. MALLORY. On that proposition, Mr. President, it might very readily occur that an argument which was not delivered before this body in the trial of this case, may be printed in the RECORD, as is done in another body, some time after the disposition of the matter, without having been submitted to those who are to decide the case. If that is so—and I think it is from the reading of the request, as I understand it—I am opposed to it, and I object.

Mr. SPOONER and Mr. BACON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin [Mr. SPOONER] is recognized. The Presiding Officer will remark that strictly under the rules, if this question is to be debated, the Senate should either retire or close its doors, but by unanimous consent this discussion has gone on, and unless some motion is made the Presiding Officer will not enforce the rule.

Mr. SPOONER. Mr. President, I am as anxious as the Senator from Massachusetts [Mr. LODGE] or any other Senator that the proceedings in this case may be expedited. I think that this is public business, and I shall be very sorry, as one Senator, and will not consent that there shall be in this matter any departure from those rules of procedure which everywhere in the world are acknowledged to be just and are usual in criminal or quasi criminal cases. I can see no objection to the publication or the printing in the RECORD of any argument on one side which the other side seasonably will have opportunity to peruse and to answer.

This is a case which involves, of course, the interests of the people. It involves vitally the interests of the respondent. Whether technically this is a court or not, it pronounces a sentence or judgment. It is a court or a tribunal of first instance and of last resort. There is no appeal from its decision. If it commits an error, there is no reviewing tribunal.

Nowhere in any judicial tribunal in the country, I think, in a matter involving not simply the right to hold an office, but the right ever to hold an office of honor, trust, or emolument, would it be tolerated that an argument should be made and communicated to the court without opportunity to counsel on the other side to reply to it as fully as they might be advised.

Now, if the managers have some argument to submit in answer to the brief which is printed in the RECORD this morning,

that, I should think, would be entirely proper to be printed, but that the managers shall be permitted to submit to the Senate, after the counsel for the respondent have finished their argument, further argument on any of these charges or these articles I think is against the justice of judicial procedure. The Senator from Florida [Mr. MALLORY] I understand to object to that. If he did not, I should.

Mr. DANIEL. I ask that that request may be read again, Mr. President.

The PRESIDING OFFICER. The Secretary will read the request of the managers.

The Secretary read as follows:

That any of the managers or counsel for respondent, having all or any portion of his argument in manuscript, may deliver a copy of the same to the Reporter; and any portion thereof, which for lack of time or to save the time of the Senate, the managers or counsel shall omit to deliver or read, shall be incorporated by the Reporter as part of the argument delivered; and any manager who does not address the court may file an argument before the close of the discussion.

Mr. DANIEL. Mr. President, my disposition would be to vote for any reasonable request made by the managers or by counsel for the respondent here; but I could under no circumstances vote affirmatively on that request. In my opinion it violates the fundamental principles of English and American law. Every accused person is entitled to be present with his counsel, to have an opportunity to hear every charge and every word of argumentative speech that is made against him, and also to have opportunity to respond thereto. It seems to me that a statement of the case carries an enforcement of its justice. If that request were granted a most serious and grave argument might appear in print after this case was heard, presenting it in aspects which had not occurred either to the accused, to his counsel, or to any of his judges.

It might be, though, and very properly, that if the managers desire to submit any views upon any of these questions of jurisdiction, or the nature of offenses that are cognizable here, such as are considered in the essay which is published in this morning's RECORD, they might have opportunity to reply to that essay or to submit any views of their own before this case goes to oral argument. But that an argument should be addressed to a jury, or what may be considered as a quasi jury, and published after the arguments are over, would be paradoxical to all ideas of justice and to the fixed principles of American law as they exist in every State of this Union, and in all of our national adjudication, indeed which exists wherever the English people have planted a colony or have erected a court of justice.

I would hope, therefore, that the request might be modified, and that it might be put in a form which would meet the objections which have been made to it in its present form and give full opportunity to the managers, as has been given to the counselors of the accused, to present, before they come to sum up the case, any consideration as to the nature of the offense, the jurisdiction thereof, or presenting it in any light that they might be pleased to do, so that those who have to pass upon it might have it before them, and so also that those who might wish to rebut it would have their opportunity to do so in an equal way.

Mr. LODGE. Mr. President, I merely want to call attention to the fact that this destruction of law and justice now before us, by allowing the managers to file arguments, has already been perpetrated by the Senate in a previous case. In the Andrew Johnson impeachment trial it was ordered—

That as many of the managers and of the counsel for the President as desire to do so be permitted to file arguments or to address the Senate orally, but the conclusion of the oral argument shall be by one manager, as provided in the twenty-first rule.

So that it is not unheard of.

Mr. SPOONER. It ought to be unheard of.

Mr. BACON. Mr. President, it may be that it is practicable to modify the request so far as to enable the managers to file these written arguments before the conclusion on the part of the counsel for the respondent. But aside from that, it occurs to me that it would certainly be unjust to limit in a case of this kind counsel on either side as to time, and when the matter is presented there is a probability that they will not be able within that time to present in full their views. It is unjust, then, to limit and deny them the opportunity to put on record what is their argument in the case.

Now, as to what modification may be made to prevent an undue consumption of the time of the Senate under the present emergency—because we do stand facing an emergency—and at the same time do justice both to counsel for the respondent and to the managers on the part of the House, I am not now prepared to say. But something ought to be done. It does occur to me to be the height of injustice to do what we are told here to-day is unprecedented, in limiting the managers on the one side or counsel on the other as to the time they shall occupy, and at the same time deny them the opportunity to file argument which shall be incorporated in the RECORD.

Mr. Manager PALMER. Mr. President, on the part of the managers, I will accept the suggestion that the arguments, whether law briefs or others, shall be filed and presented before the concluding arguments on the part of the respondent.

Mr. DANIEL. Mr. President, I rise to an inquiry.

The PRESIDING OFFICER. The Senator from Virginia will state his inquiry.

Mr. DANIEL. The remark made by one of the honorable managers in this case leads me to inquire whether or not each side have been allowed all the time they desire for the proper presentation of their cause? I should be very glad if the honorable managers and the counsel for the respondent would state to the Senate whether or not they have sufficient time, in their judgment, to make a just and full presentation of the cause in their hands.

Mr. Manager PALMER. Well, Mr. President, if I may be permitted to answer the inquiry, I will say that we have yielded to the evident desire of the Senate and have made the time just as short as we possibly could. Of course we would have been very glad to have had more time; but in yielding the time limit we did expect to have the opportunity of completing the arguments that were partly made before the Senate by printing them in the RECORD. We have agreed to the five hours' limit; but it was on the tacit understanding, at least, that a manager who made an argument should be allowed to finish what he could not speak orally by printing it in the RECORD.

Mr. THURSTON. Mr. President, the time allowed to counsel for the respondent by the Senate is entirely satisfactory to us in view of our knowledge of the grave public duties that this Senate must perform in a very short time.

So far as the printing of arguments is concerned, the suggestion of the manager, if carried out, is satisfactory to us, so that any arguments to be printed without having been delivered in the Senate may be presented in sufficient time that they may appear in the RECORD for our examination before we are called upon to answer to them.

Mr. BACON. Mr. President, in view of the fact that the argument is very soon to begin, I did not understand by the suggestion which I made that it would necessarily have to appear in the RECORD. I should suppose that, if counsel for respondent were furnished with copies, either typewritten or printed, it would be a sufficient compliance with the designs of the modification.

Mr. MONEY. Mr. President, in justice to the managers, I think they should be allowed to print anything that they may find necessary in answer to the matters printed by the respondent's attorneys, without having been orally delivered or read; but I am led to inquire what is the utility of printing in the RECORD, after the Senate sitting in an impeachment trial shall have decided the case, matters which were intended only to produce an effect upon the minds of the Senate? We are not going to vote, as a Senator near me says sotto voce, until the evidence is concluded; but this is a case where it is asked that the managers or the respondent be permitted to print what has not been delivered in the Senate sitting as a court, or rather, sitting in an impeachment trial; for I do not consider it a court. I can not see why anything that is not to have any effect upon the judgment of the Senate should have any place in the RECORD at all. It may be said that the gentlemen who have good arguments with no time to deliver them should round out the RECORD with part of their arguments which they had no opportunity to deliver, but the inquiry is, What good can be gained by printing them after the Senate has pronounced its judgment? It can not affect anybody. It is mere surplusage; and I, for my part, do not see why anything should be printed in the RECORD that is not delivered before the Senate either in print or orally. It certainly can be of no service in the prosecution of this case either to the managers or to the respondent.

The PRESIDING OFFICER. The Presiding Officer does not understand that this request, if granted, would allow the printing of anything after the arguments shall have been closed on the part of the managers or counsel for the respondent. One of the managers has suggested a modification, and perhaps the whole request had better be read as modified.

The Secretary read as follows:

That any of the managers or counsel for respondent having all or any portion of his argument in manuscript may deliver a copy of the same to the Reporter, and any portion thereof, which for lack of time or to save the time of the Senate, the managers or counsel shall omit to deliver or read, shall be incorporated by the Reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion: *Provided*, That all briefs and arguments shall be printed before the closing argument for the respondent begins.

The PRESIDING OFFICER. Is the Senate ready for the question?

Mr. BATE. I want to suggest there, Mr. President, that if they print this the Senate have a right to see that print and to read it or to hear it. The Senate is at last the judge; we are a quasi jury, and we certainly ought to have a right to see, to read, and digest the arguments.

The PRESIDING OFFICER. The Presiding Officer supposes it means printed in the RECORD from day to day.

Mr. Manager PALMER. Yes.

Mr. BATE. Suppose they close this case or finish it on to-morrow; then it is complete, and the speech or argument is given to the Reporter and we will not see it or hear of it. I think, Mr. President, if I may be pardoned for saying so, we made a mistake in limiting these arguments. We ought to conform to the rules of practice in such cases. We have no cloture rule in the Senate, and a Senator may speak as long as he pleases; but we never publish speeches here that are not delivered, and it is not in conformity to our custom at all to limit us in our speeches, and I think we are in error about this.

The PRESIDING OFFICER. Is the Senate ready for the question of granting the request of the managers? [Putting the question.] By the sound the "ayes" have it. [A pause.] The "ayes" have it, and the request as modified by the managers is granted.

Are counsel for respondent ready to proceed?

Mr. BACON. Before counsel for respondent proceeds, there is a witness to whom several Senators desire to propound some questions. I ask that Mr. W. A. Blount be recalled.

The PRESIDING OFFICER. The Presiding Officer understands that the witness was recalled yesterday by telegraph and is in attendance. The Sergeant-at-Arms will find Mr. Blount. [After a pause.] The Sergeant-at-Arms informs the Presiding Officer that Mr. Blount appeared this morning; he is now absent, but will probably return.

Mr. BACON. He was in the building this morning. When he returns it will be time enough.

The PRESIDING OFFICER. There is no doubt that he will be found. In the meantime, if the Senator from Georgia does not object, the respondent will proceed with other witnesses.

Mr. BACON. We are content with that, Mr. President.

Mr. HIGGINS. Mr. President, on behalf of the respondent, I make the offer of a certified copy of the proceedings of the meeting of the board of county commissioners of Leon County, Fla., December 10, 1904. It is the board which was spoken of by a witness yesterday—Milton Jackson. I have presented the paper to the learned chairman of the managers, and would ask if there is any objection to it.

Mr. Manager PALMER. Yes, sir. We object to it as irrelevant, incompetent, and tending to throw no light on the subject-matter under discussion.

Mr. HIGGINS. Mr. President, the Senate took a vote yesterday as to whether or not a witness should be allowed to answer as to a subject-matter of which the substance of this paper is a vital part, and he was permitted to answer. We here have obtained a copy, certified to by the clerk of the body in which the resolution was adopted. We conceive it of the highest importance as fixing a date and also establishing an act, through the testimony of this witness of whom I have spoken, by Judge Swayne at the very beginning of this period of dispute as to residence; and as such we think it absolutely pertinent to the issue, part of the res gestae, and eminently proper to be admitted.

The PRESIDING OFFICER. The Presiding Officer has no knowledge whatever either of the contents of the paper or generally what the paper is about.

Mr. HIGGINS. I will include that in my offer. It is that the county commissioners of Leon County, Fla., in which is situated the city of Tallahassee, adopted a resolution at that time extending to Judge Swayne as the judge of the northern district of Florida, having to make a residence within his district, an invitation to reside in the city of Tallahassee. That evidence is before the court. The matter was brought to the attention of a witness (who has been examined here) by the Judge, who told him, the witness testified, that he would not live in Tallahassee because he had taken his residence in Pensacola. It is a fact and a circumstance connected with the act of residence.

The PRESIDING OFFICER. This paper is a certified copy of the action of the board of county commissioners, held in Tallahassee, being an invitation sent to Judge Swayne to make his permanent home in Tallahassee. The Presiding Officer does not see how it is evidence in this case. If any Senator desires, he will submit the question to the Senate. [A pause.] It is not admitted.

Mr. HIGGINS. Call Charles F. Warwick.

Charles F. Warwick sworn and examined:

By Mr. HIGGINS:

Question. Where do you reside?

Answer. In Philadelphia.

Q. What is your occupation?

A. I am an attorney at law.

Q. How long have you been such?

A. Since 1874.

Q. Have you held any official positions in the city of Philadelphia?

A. Yes, sir; I have.

Q. What, sir?

A. I was for eleven years corporation counsel for the city, or, as we call it, city solicitor, and for four years I was mayor—from 1895 to 1899.

Q. Was there any interval between your going out of the office of city solicitor and your entering the office of mayor?

A. There was not.

Q. What year was it that you ceased to be city solicitor?

A. On the first Monday of April, 1895.

Q. And you were elected mayor just preceding that, I suppose?

A. I was elected mayor of the city in February, 1895, and held office for four years.

Q. Do you know Judge Charles Swayne?

A. Very well.

Q. How long have you known him?

A. Ever since I came to the bar. I think I knew him before that intimately.

Q. Intimately, you say?

A. Intimately.

Q. Do you remember the fact of the act of Congress curtailing his district?

A. I do.

Q. Will you please state whether on or about or after that time, and fix the time yourself, you had any conversation with him, and he with you, concerning where he would make his residence in Florida?

Mr. Manager PALMER. Wait a moment. We object to that testimony as being irrelevant and incompetent. The declaration of the respondent as to where he intended to reside is, in our judgment, not evidence in this case.

Mr. HIGGINS. I think the Senate has already passed on that question, Mr. President.

Mr. Manager PALMER. It may pass on it again.

The PRESIDING OFFICER. The Presiding Officer will submit the question to the Senate. The question will be repeated by the Reporter.

The Reporter read as follows:

Q. Will you please state whether on or about or after that time, and fix the time yourself, you had any conversation with him, and he with you, concerning where he would make his residence in Florida?

Mr. HIGGINS. "Or where he had made it." That is the modification.

Mr. McCUMBER. Mr. President, before submitting the matter to the Senate, I wish counsel would inform the Senate on what principle of law he justifies a proposition to introduce in evidence a self-serving declaration of a party defendant in a criminal proceeding.

Mr. HIGGINS. Mr. President, I had the honor to submit some remarks upon that question yesterday. We contend that such an assertion made before the present impeachment proceedings were mooted or expected, or as the maxim of the law has it ante litem motam, is itself essentially a verbal fact. Residence is made up of two elements—intention and action. Intent without action is futile to make a residence, but intention becomes a most important part of the proposition in the end as to what constitutes residence. As I have said and admitted, alone it will not make it, but it is a part of a whole in which it takes its own due proportion.

Now, if this were a self-serving assertion, made after the fact, if it came into the case in such a way it would be so clearly objectionable that it never would be presented by counsel for the respondent. But we submit it is a most important thing. When the good faith of the conduct of the respondent is in dispute, we bring here a witness of the highest character and standing to prove what at that time was the expressed intention of the respondent in respect to establishing his residence. I think therefore that, while admitting the principle upon which the distinguished Senator raises his question, we have brought this within an exception thereto. If we had expected that this question would be raised again to-day, after it had been disposed of yesterday, we would have come prepared with authorities to submit.

Mr. Manager PERKINS. Mr. President, just a word. I did

not again object to-day because the Senate yesterday, I must confess somewhat to my surprise, allowed a similar question to be answered. Doubtless it was that the legal question involved was not presented by me with the clearness with which it has now been stated by the Senator from North Dakota. The gentleman on the other side misstates the question and avoids the inquiry made by the Senator. It is not can Judge Swayne's intention be proved? His intention is a question that perhaps can be proved, but Judge Swayne's intention, no more than any other thing in Judge Swayne's behalf, can be proved by Judge Swayne's own statement.

It is offered to prove here, what? Judge Swayne's intention, by the fact that Judge Swayne said it was his intention. As the Senator from North Dakota properly says, it is an endeavor to prove something in behalf of the defendant by his own statement. There is the inherent vice of the question, and I think the failure perhaps to catch that point yesterday was the reason the ruling was made by the Senate.

Mr. HIGGINS. Only a word in reply. The learned manager who would confine the evidence of intention to acts, when from the very great case in 3 Washington Report down it is the established law as to citizenship, as to residence, as to domicile, that they are each and every one of them made up of two articles—of intent and of action—and that if you can not prove anything by words you are confined merely in your evidence to acts. That is not the law, with all due respect to my learned friend.

Mr. Manager OLMSTED. May I add a word? I again call the attention of the Senate to the fact that this precise question was before the Senate of the United States in the impeachment trial of Andrew Johnson, where his counsel offered to prove, for the purpose of showing the intent of the President of the United States, his statements to other parties. There was then cited the celebrated English case of Hardy, reported in 24 State Trials, page 1096, where it was held by the House of Lords:

Nothing is so clear as that all declarations which apply to facts, and even apply to the particular case that is charged, though the intent—

Mark the words—

though the intent should make a part of that charge, are evidence against a prisoner, and are not evidence for him, etc.

Upon the citation of that authority and the argument of the case the United States Senate decided, by a vote of nearly 4 to 1, that such a statement made by the respondent could not be proved by the party to whom he made it.

Mr. HIGGINS. I have not had a chance to reply to that. I agree to that law, for that was not a case of residence nor of domicile nor of citizenship. It was a case of ordinary criminal conduct, where the intent is inferred from the act. But the difference is laid down in the law, that residence is a mixed question of law and fact; that it is made up of action plus intent, and intent plus action, and therefore it is to be differentiated entirely from Hardy's case, and goes back to another class of authorities entirely.

The PRESIDING OFFICER. As the Presiding Officer is about to submit the question to the Senate, the Reporter will read the question propounded by counsel for the respondent.

The Reporter read as follows:

Q. Will you please state whether on or about or after that time, and fix the time yourself, you had any conversation with him, and he with you, concerning where he would make his residence in Florida?

Mr. HIGGINS. "Or where he had made it." That is the modification.

The PRESIDING OFFICER. Shall the witness be permitted to answer the question. [Putting the question.] In the opinion of the Presiding Officer the "noes" have it. The noes have it, and the answer is excluded.

Mr. HIGGINS. Call Doctor Crossam.

J. Willard Crossam sworn and examined.

By Mr. HIGGINS:

Question. Where do you reside?
Answer. Centerville, Del.
Q. What is your age?
A. Thirty-four.
Q. What is your occupation?
A. Physician.
Q. Are you a doctor of medicine?
A. Yes, sir.
Q. How far is Centerville from Guyencourt?
A. Probably 2 miles or two miles and a half.
Q. Are you or not the family physician of Mrs. Anne Swayne?
A. I am.
Q. Her personal physician?
A. I am.
Q. As such, are you familiar with that household?
A. I am.
Q. Where did you graduate as a physician?
A. The University of Pennsylvania.
Q. How long have you been a practicing physician?
A. Ten years.
Q. Do you know the respondent, Charles Swayne?
A. I do.
Q. And his family?
A. I do.
Q. Will you please state, within your knowledge, when and for how long during the years from 1894 on they have lived at the Swayne house at Guyencourt?
A. In 1896 I became familiar with the Swayne household. I never remember of Judge Swayne or his family residing there, only on a visit.
Q. On a visit; at what time of the year?
A. Probably during the months of July and August.
Q. Would you see them there then?
A. At times I did.
Q. Did you ever see them there later than that or earlier?
A. Not to my knowledge, with the exception of one time, when they were summoned on account of sickness.
Q. Whose illness was that?
A. That was Henry G. Swayne's wife.
Q. Do you remember what year that was?
A. That was in 1902.
Q. Do you know what time of the year Mrs. Swayne lived there and what time she left?
A. She generally came in in the spring, as soon as the weather was favorable for a woman of her age to travel, and returned probably in November.
Q. But did not spend the winters there?
A. No.
Q. You were not called on to attend her during the winter time?
A. No, sir.
Mr. HIGGINS. Cross-examine.
Mr. Manager PERKINS. We have no questions to ask.
Mr. HIGGINS. I understand Mr. Blount is now accessible.

W. A. Blount recalled.

Mr. CULBERSON. Mr. President, I present several questions to be propounded to the witness, Mr. Blount, and ask that they be read. They are numbered.

The PRESIDING OFFICER. The questions will be read in the order in which they are presented.

The Secretary read as follows:

Q. Did Judge Swayne ever, within your knowledge, register or cast a vote in Florida? If so, when and where did he do so?

A. Not to my knowledge.

The Secretary read as follows:

Q. Did Judge Swayne ever, within your knowledge, pay a poll tax in Florida? If so, when and where was it paid?

A. Not to my knowledge.

The Secretary read as follows:

Q. State any fact within your personal knowledge, aside from any mere claim of legal residence, tending to show that Judge Swayne, prior to 1900, had, in Pensacola, Fla., or elsewhere in his district, a house, residence, or place of abode for himself and family.

A. It is a little difficult to answer that in that compendious shape without recollection. I do not know that I know of anything except the fact that probably in 1900 he rented a house——

Mr. CULBERSON. I ask that the question be again read to the witness on that particular point.

The Secretary again read the question, as follows:

Q. State any fact within your personal knowledge, aside from any mere claim of legal residence, tending to show that Judge Swayne, prior to 1900, had, in Pensacola, Fla., or elsewhere in his district, a house, residence, or place of abode for himself and family.

A. Upon the spur of the moment and without being able to say that my answer is exhaustive, I can say that I know of nothing tending to show that, in my opinion, except the fact that probably in 1900——

Mr. CULBERSON. Mr. President——

The PRESIDING OFFICER. The question is confined to the period prior to 1900.

The WITNESS. Before 1900?

Mr. CULBERSON. That is the question.

A. I beg your pardon. I did not catch that. I do not.

The Secretary read as follows:

Q. State any fact within your personal knowledge showing, or tending to show, that Judge Swayne prior to 1900 exercised any right, performed any duty, or took advantage of any privilege as a resident of Pensacola, Fla., or his district.

A. I have no knowledge of his performance of any such act or taking advantage of any such privilege that I now remember.

The Secretary read as follows:

Q. State fully how long, if at all, Judge Swayne, prior to 1900, remained in Pensacola, Fla., after the transaction of the business of the court.

A. His custom was to leave immediately after the transaction of the business of the court. I can not say, with reference to any specific instance, as to how long he remained, but I can simply say that it was his almost invariable, if not his invariable, custom to go somewhere immediately that the court adjourned.

The Secretary read as follows:

Q. Were you counsel for O'Neal in the contempt proceedings against him before Judge Swayne?

A. I was.

The Secretary read as follows:

Q. Did you raise a question of jurisdiction of the court in those proceedings? If so, please state such question fully and how it was raised.

A. I raised the question by a demurrer——

Mr. THURSTON. Mr. President, while ordinarily we would have no objection to the answer which we anticipate, yet the O'Neal case is all here of record, and objection was made yesterday to our asking the witness Greenhut as to the injury he received and which was exhibited in court at the time of that trial. The objection was based upon the fact that the complete record being here we could not go outside of it. Therefore, in return, I make the same objection, that the record of the O'Neal case shows every proceeding that was had therein, including any objection that may have been taken to the jurisdiction.

The PRESIDING OFFICER. This question is propounded by a Senator. If objection is made to an answer being given. the Presiding Officer will submit to the Senate the question whether it shall be answered.

Mr. THURSTON. It was my intention, of course, not to make the objection to the question, but to the answer being given by the witness.

The PRESIDING OFFICER. That is the matter which will be submitted to the Senate.

Mr. Manager OLMSTED. Before that is done, may I make a suggestion? This is a very different matter from the testimony which was sought to be brought out by Greenhut. There the attempt was to prove by him the extent of his injuries in a street combat, with no evidence that the facts as to which he was to testify had been before the court. Our objection was not because of the fact that it was in the record, but that it was proposed to prove something as an excuse for the judge which had not been before him at the trial of the case, while here this witness is asked to testify to what occurred at the trial of the contempt case.

The PRESIDING OFFICER. The Secretary will read the question.

The Secretary read as follows:

Q. Did you raise a question of jurisdiction of the court in those proceedings? If so, please state such question fully and how it was raised.

The PRESIDING OFFICER. Shall the witness answer the question? [Putting the question.] In the opinion of the Presiding Officer the ayes have it. [A pause.] The ayes have it, and the witness will answer.

The WITNESS. Please read the question again.

The Secretary read as follows:

Q. Did you raise a question of jurisdiction of the court in those proceedings? If so, please state such question fully and how it was raised.

A. I did raise such a question by a demurrer to the affidavit of Greenhut, which was the foundation of the proceedings. The question raised was, as I have said, one of jurisdiction. I took the position that necessarily O'Neal was not an officer of the court, and consequently that branch of the statute of 1831 did not apply to him. I took the further position that the offense committed by him, if any, was not in the presence of the court, or so near thereto as to obstruct the administration of justice; and I took the further position that under the last paragraph of the first section of that statute it was necessary that there should be an affirmative order, mandate, decree, or process of the court and that the alleged offender should have obstructed the execution of that order, and that in this case there was no such order or mandate, etc. I think that completes the scope of my argument upon the subject and the presentation of it to the judge.

Examined by Mr. HIGGINS:

Q. Was the prosecution represented by counsel?

A. Yes.

Q. Who?

A. Mr. Tunison.

Q. What argument was advanced by him in opposition to your proposition as to the jurisdiction?

A. His principal discussion was upon the first branch of the argument I made, that this was not in the presence of the court or so near thereto as to obstruct the administration of justice, he taking a position negativing that which I had taken. The latter part of my proposition I do not think he attempted to meet. At least, in my opinion, he did not meet it at all.

Q. He did not admit it?

A. No.

Q. So that resistance was made, as far as counsel could, to the proposition that the act of Greenhut in bringing the suit was not because of an affirmative order or decree of the court?

A. There was no specially active resistance to that proposition. As I have just stated, Mr. Tunnison seemed to pass it over to a large extent.

Q. Now, was there or was there not introduced into the record a further statement on behalf of O'Neal or by him, putting in the record the fact that the location of Greenhut's store, where this encounter took place, was some distance from the court room, and that the judge was not holding any court at the time, and was not in the district at the time?

A. My recollection is that I, under the doctrine in the Cuddy case, attempted to get that statement before the circuit judge upon habeas corpus.

Q. Did it not go before him on habeas corpus, and is it not referred to in his opinion, that it made no difference how far it was from the court room or whether the court was in session or not?

A. I have not seen the opinion since it was printed. I think it is.

Q. If you think so, then that would be overruling your contention by the circuit court of appeals when you invoked its authority?

A. Distinctly; that is, by Judge Pardee, with whom were associated as circuit judges Judges Shelby and McCormick—not the circuit court of appeals.

Q. Now, one other question, Mr. Blount. When you say that the judge would leave after the sessions of the court, I did not catch your answer as to whether it was limited as to any particular year or years. I would ask you as to how far your answer extended in that respect?

A. I understood it to apply to the period before 1900.

Q. Do you know where the judge went when he did leave?

A. Not in every instance. I know sometimes where he first went, but I did not keep up with his movements except so far as it was necessary for me to write to him on my own business.

Q. Of course the records in the other courts can show where he was holding court out of his district?

A. I know nothing about that except on one or two occasions I had occasion to write to him when holding court.

Q. Nor do you undertake to say how long a time he did spend, as a matter of fact, in Pensacola?

A. You mean during those years?

Q. Yes.

A. I had not said, but I do have an idea; yes.

Q. Well?

A. Of course I have to give a rough average. I should say it did not exceed two months in each year.

Q. As far as you know?

A. As far as I know.

Mr. HIGGINS. That will do, sir.

Reexamined by Mr. Manager PALMER:

Q. In point of fact was the court in session at the time when this O'Neal difficulty occurred?

A. It was not.

Q. Was Judge Swayne in Pensacola at that time?

A. He was not.

Q. When you did write to Judge Swayne, he being absent from his district, where did you address your letters generally?

A. Sometimes to Guyencourt; sometimes, in the early part of the period that has been mentioned, to St. Augustine, and again where he was holding court. I kept no track of him except through the clerk. I would go to the clerk and ask him where the Judge was and then write to him at the place indicated to me by the clerk.

Mr. BACON. Mr. President, I have some questions which I desire to propound to the witness and reference is made in them to his former testimony.

The PRESIDING OFFICER. A question has been sent to the desk by the Senator from Alabama [Mr. PETTUS], which will be first stated.

The Secretary read as follows:

Q. On the trial of O'Neal did you read to the judge the statute of 1831, defining contempts?

A. Yes; at first entirely, and I referred to the several portions of it several times.

The PRESIDING OFFICER. The Senator from Georgia [Mr. BACON] propounds some questions.

Mr. BACON. Mr. President, I have some questions to propound to the witness, and as they make reference to testimony I will send to the desk the book, for the convenience of the witness, that he may refer to it. The pages are indicated in the questions, and there are also marks in the book.

The PRESIDING OFFICER. The first question sent to the desk by the Senator from Georgia will be read.

The Secretary read as follows:

Q. Was the United States district attorney in and for the northern district of Florida in the city of Pensacola on Sunday morning when Judge Swayne telephoned you information that suit had been brought against him and asked you what you thought about it?

A. I think that he was. I have no reason to think otherwise. He had been in court during the preceding week, and I presume he was there on Sunday.

The Secretary read as follows:

Q. Was the United States district attorney in the court room or in the city of Pensacola on Monday when you made the suggestion to the court that a contempt of court had been committed by Messrs. Paquet, Belden, and Davis?

A. I do not know. I have no recollection on the subject.

The Secretary read as follows:

Q. When last upon the stand, replying to a question as to when you filed in writing the suggestion that a contempt had been committed, you said, "I think just after the adjournment of the court." (See page 363.)

The WITNESS. I recollect it.

The Secretary read as follows:

Q. Then, replying to the next question, page 364, on the same subject, you said, "I did not file it in writing. I sat down at the desk and wrote it on the motion docket." You will now please state when there was prepared the written motion of November 11, 1901, which purports to have been signed by you, and which is found on page 239 of the record of the impeachment proceedings.

A. I endeavored in my testimony to be entirely accurate and to make a distinction between filing and writing upon the docket. At first, I recollect, I said I filed the motion, but I corrected myself by saying I sat down at the desk and wrote on the docket. It was in writing upon the docket and signed by me. Does that cover the question?

Mr. BACON. I should be glad to have the question again read. I did not fully catch the answer of the witness.

The Secretary read as follows:

Q. When last upon the stand, replying to the question as to whether you filed in writing a suggestion that a contempt had been committed, you said, "I think just after the adjournment of the court." (See page 363.) Then, replying to the next question (page 364) on the same subject, you said, "I did not file it in writing. I sat down at the desk and wrote it on the motion docket." You will now please state when there was prepared the written motion of November 11, 1901, which purports to have been signed by you and which is found on page 239 of the record of the impeachment proceedings.

A. Supplementing my answer just now, so as to meet the full question, it was prepared immediately before or immediately after the adjournment of court; my recollection is immediately afterwards. As I testified the other day, I made the suggestion verbally, and thought that that was the only thing that I was going to do. But Judge Swayne requested that Mr. Fisher and I should proceed with the matter, and also it was suggested that a written form would be better, and I sat down before the motion docket and placed it upon the motion docket and signed it.

The PRESIDING OFFICER. The next question propounded by the Senator from Georgia [Mr. BACON] will be read.

The Secretary read as follows:

Q. It has been testified that in pronouncing sentence upon Messrs. Belden and Davis Judge Swayne did so orally, and that he did not at the time read from any paper (page 438). You will please now state who prepared and wrote the order of sentence signed by Judge Swayne November 12, 1901, found at page 242. Further, if you know who prepared said order, please state when the same was prepared.

A. I do not know either of those things. As soon as Judge Swayne had orally given his opinion and pronounced the sentence I left the court room, and any further proceedings were without my knowledge, and I know nothing of it now except what I see from the record.

Mr. BACON. I do not know whether the witness's last answer covers this interrogatory or not, but I propound it to be sure.

The Secretary read as follows:

Q. Do you know who prepared and wrote the order of commitment of E. T. Davis of November 12, 1901 (see p. 242), and also the corresponding commitment of Simeon Belden (p. 248) on the same date? If so, when were said commitments prepared and written?

A. I do not know who wrote them nor when they were prepared.

Mr. BACON. Now, one other question, Mr. President.

The Secretary read as follows:

Q. Was Fisher, with whom you conferred as to the question of commitment and who was appointed with you by the Judge in the contempt proceedings, both a party defendant and counsel for defendants in the McGuire case, as you were yourself?

A. He was a party defendant. My recollection is that he was not an attorney of record, though he was assisting and counseling and advising with me at every point in the case.

Mr. MORGAN. Mr. President, I have some questions that I desire to propound to the witness.

The PRESIDING OFFICER. The Senator from Alabama propounds the following question.

The Secretary read as follows:

Q. When did you first know that Judge Swayne was contracting with a view to obtain a title to or an interest in lot No. 91 in the tract of land claimed by Florida McGuire?

A. I never knew of it until Judge Swayne announced on the morning of the 5th of November that negotiations had taken place, and that those negotiations ceased by the return of the deed.

The Secretary read as follows:

Q. How did you gain that information, and from whom?

Mr. MORGAN. That has been answered.

The WITNESS. Only in that way and at that time.

The Secretary read as follows:

Q. Did you converse with Judge Swayne about the purchase by him or a member of his family of the land claimed by Florida McGuire before this suit came on for trial? What was said by both of you in such conversations?

A. Neither at that time, nor before that time, nor at any other time.

The Secretary read as follows:

Q. Being defendant in the suit of Florida McGuire, was it for that reason that you volunteered to act as amicus curiæ in moving that Belden and Davis and Paquet be punished for contempt, or was it only your desire to protect the honor and dignity of the court that moved you to enter a motion to punish them for contempt?

A. If I know myself I think it was a desire to have the dignity of the court protected in order that they might be punished for contempt. It was a matter absolutely immaterial to me whether I was or was not a defendant in the suit. I did not care whether those attorneys remained in the suit or did not remain. I did not fear them, or either of them, and if I had been asked to select antagonists that I desired to accomplish a victory against I should have selected those three gentlemen.

The Secretary read as follows:

Q. Were you not disappointed and indignant, and were you not angry, when the case was discontinued in which you had a personal interest?

A. I was disappointed because I desired to try the case; as to being angry, I think not. I have no recollection of being so.

Mr. BACON. Mr. President, I propound the following question.

The PRESIDING OFFICER. The Senator from Georgia propounds the following question:

The Secretary read as follows:

Q. Where was the recognized and admitted residence of the United States district attorney in November, 1901?

A. In Pensacola, Fla.

The PRESIDING OFFICER. Do Senators desire to propound further questions to this witness?

Reexamined by Mr. HIGGINS:

Q. Mr. President, I wish to ask a question. Who was the United States attorney at the time of the O'Neal proceeding?

A. Mr. John Egan.

Q. Was he or not, Mr. Blount, at that time counsel for the American National Bank, the bank of which O'Neal was the president and that was the defendant in the suit by Greenhut?

A. He was.

Q. Was that or not a reason why he did not take charge of the proceedings against his client O'Neal in the contempt proceedings?

A. I do not know; I was trying to refresh my recollection. It seems to me that he mentioned the matter to me, but upon the spur of the moment I can not say.

Q. I think I have asked you the question before, but I can not recall your answer. Who did represent the prosecution against O'Neal in the contempt proceeding?

A. Mr. B. C. Tunison.

Q. Was Egan the United States attorney at the time of the Davis and Belden proceedings?

A. Yes.

Mr. HIGGINS. That will do, sir.

The PRESIDING OFFICER. Is that all of this witness?

Mr. HIGGINS. That is all, I think.

Reexamined by Mr. Manager PALMER:

Q. Wait half a minute. Mr. Egan did not have anything to do with Belden and Davis in the Florida McGuire case, did he?

A. You mean as attorney or otherwise?

Q. Yes.
A. I do not think so.
Q. There was no reason why he should not have appeared and prosecuted the contempt against Belden and Davis, that you know?
A. I do not know of any reason why he should not.
The PRESIDING OFFICER. Is that all?
Mr. Manager PALMER. That is all.
Mr. HIGGINS. That will do, Mr. Blount.

F. W. Marsh, recalled.

Reexamined by Mr. HIGGINS:

Question. Mr. Marsh, in answer to a question from the Senator from Texas——
Mr. CULBERSON. On what page?
Mr. HIGGINS. Page 428. [To the witness.] You state, "The only information I could give would be conversations with Judge Swayne" in his endeavors to get a house in Pensacola. I did not examine you at that time on that branch of the case. I wish you now to state what endeavors to get a house in Pensacola were made by Judge Swayne, within your knowledge?
Answer. In the late fall or winter of 1896 Judge Swayne requested me to help him in obtaining a suitable residence in Pensacola for rent. Without going into details at all, during that year—the winter of 1896–97, and up to the spring of 1898—I made a great many endeavors to get a suitable house for rent in Pensacola for Judge Swayne. As I recall, in 1897 Judge Swayne drew a plat of such a house as he wanted and requested me to see if I could procure some one to build such a house in Pensacola. I submitted these plans to several parties, but was unable to get anyone to build such a house or a house anything like it. In the spring of 1898 Judge Swayne requested me to cease my efforts, as his family was going to Europe. At his request, in the winter or late fall of 1899 I took up the quest again, and not until September, 1900, secured such a house as he had been looking for on satisfactory terms.
Q. What was that house?
A. That was the Simmons cottage.
Q. Did he occupy that cottage?
A. Yes, sir; he moved into that cottage October 1, 1900.
Q. How long did he remain there?
A. He remained all of that winter, with the exception of December, when he went to Tyler, Tex., by himself—he left his family in Pensacola—and late into the spring and early summer.
Q. After he left the Simmons cottage where, if any place, did he reside?
A. He moved from the Simmons cottage into the Blount property that he purchased from Mr. A. C. Blount, jr.
Q. Who owns that property now?
A. Judge Swayne.
Q. Is that his residence now?
A. Yes, sir; his furniture and property are there.
Q. Do you know of any visits during the time of which you have spoken, from 1896, of his family to him at Pensacola?
A. Frequently. His wife was there with him, I think, on four or five occasions that I recall; and on two occasions his eldest son, Henry G. Swayne, and, I think, on two other occasions, his youngest son; and on one or two occasions his daughter. Sometimes they would come at the same time—two or three of them—and sometimes separately.
Q. How long did Mrs. Swayne remain there, within your knowledge, at any of those visits?
A. I think during the time the Judge was there himself.
Q. Do you know where they stayed?
A. Well, at the early part of the time of which I speak they boarded with Captain Northrup, and on one or two occasions I think Mrs. Swayne, and possibly one of the sons, came when he was staying at the Escambia Hotel.
Mr. HIGGINS. Cross-examine.

Cross-examined by Mr. Manager PERKINS:

Q. What years do you remember seeing Mrs. Swayne at Pensacola?
A. I think she was there in 1897 once or twice. She was there twice in 1899.
Q. Where was Judge Swayne staying in 1897?
A. In 1897—I think at that time his boarding place was the Escambia Hotel.
Q. And where was he staying in 1899?
A. In 1899—I think at the same place.
Q. Are you confident that Mrs. Swayne stopped at the Escambia Hotel four times in those two years?
A. No; I am not.
Q. You are not confident?
A. At one time that she was there she visited with my family.
Q. When was that?
A. I think that was in 1899.
Q. How many days did she stay with your family?
A. Not more than a week.
Q. Was Judge Swayne at that time staying with your family?
A. No, sir.
Q. What sort of a house was it that no man in Pensacola was willing to build?
A. Well, it was not the objection to the kind of house, but it was the objection to building any house that I met with in my proposition.
Q. What do you say?
A. I say it was not the objection to building the specific plans he submitted, but it was objection to building that character of house at all.
Q. Well, what character of a house?
A. It was a house with four rooms below and a kitchen in addition and four rooms above. The down stairs on one side consisted of two large parlors, between 35 and 40 feet, and on the other side was a dining room and library.
Q. Well, you have contractors and builders in Pensacola, have you not?
A. Oh, yes, sir.
Q. Houses are built there?
A. Yes, sir.
Q. There were houses for sale during all these years?
A. Up to 1898 there was very little property in the market and very little building going on.
Q. What was the name of the cottage that Judge Swayne finally rented?
A. The Simmons cottage.
Q. Was not that cottage for rent from 1894 to 1900?
A. I do not think it was; no, sir.
Q. Did not the owner of it die some years ago?
A. The owner, Mrs. Simmons, is still living. She is the owner of it.
Q. And has she not rented it for some years?
A. She rented it, I think, first in 1897 or 1898.
Q. Then the house that Judge Swayne rented in 1900 could have been rented in 1897?
A. If one had known about it.
Q. If one had known about it. Tell me again why was it that no contractor would make a contract to build this sort of a house for Judge Swayne?
A. I did not say "contractor." Judge Swayne did not propose to build it himself. He told me he did not have the funds.
Q. He did not intend to build it himself?
A. No; he wanted some real estate owner to build the property and rent it to him.
Q. He was not willing to rent a house unless it was the sort of house which you have described?
A. In a general way.
Q. And no man in Pensacola was willing to build that sort of a house?
A. I do not say "no man."
Q. You did not find any man?
A. Of the people I approached there was no person who agreed to or would consider it.
Q. Did you make diligent inquiry in behalf of Judge Swayne?
A. I approached, I think, four or five parties.
Q. And none of them would build this sort of a house?
A. No, sir.
Q. And so the result was that Judge Swayne made no negotiations for any other sort of a house?
A. Not through me.
Q. He wanted this sort of a house or he wanted no house—was that it?
A. Well, I did conduct negotiations for several houses of different character, but——
Q. They did not suit the Judge, did they?
A. The Chipley house was very different, and the negotiations fell through on a different ground altogether.
Q. Well, Judge Swayne, when he came down in the fall of 1900, rented a house, did he?
A. Yes, sir.
Q. Will you say whether that house had the parlors and the rooms which had been stated in this plan which Judge Swayne demanded?
A. Almost; yes, sir.
Q. It was a one-story cottage, was it?
A. No, sir; it was a two-story house.
Q. And that house was there in 1893 for rent?
A. That is my recollection; somewhere about that time. Mrs. Simmons was occupying the house, as I recall, in 1896 and 1897, when it was rented. I did not keep track of it.

Q. What sort of a house was it that Judge Swayne bought in 1903?

A. Well, it was a two-story house. The upper story is not a full story, but there are two or three bedrooms in the upper floor.

Q. It was not the sort of a house that you found it impossible to get built in Pensacola, was it?

A. Not specifically. It was in a general way. The house that he finally bought was not specifically the character of house that he drew the plans for.

Q. Was there any house in Pensacola of the character that Judge Swayne said he wished to have?

A. Well, I can not tell you that.

Q. Do you know of any?

A. During that period?

Q. From 1894 to 1900.

A. I suppose there were. I think there were; yes, sir.

Q. Did you find any of those houses?

A. I was unable to negotiate any lease for them.

Q. Did you make any endeavor? If so, tell us what house you endeavored to buy.

Mr. SPOONER. I think, in common with one or two other Senators, we would be glad to have this witness permitted to conclude his replies.

Mr. Manager PERKINS. I have no desire to cut the witness off. I thought he had finished.

The WITNESS. I think the first house that I took up negotiations for was what is known as the "new Simmons house," on Gregory street. It is rather a large house. After looking it over, I found that it was badly out of repair and in a very low part of the town; the water settled around the grounds; and I gave that up without even communicating with Judge Swayne. The second house, as I recall, was one owned by Mr. Sullivan, but that was rented before I had an opportunity to communicate with Judge Swayne. The next was the property of Mr. George W. Wright. I communicated with Mr. Wright, but he told me that he intended moving into town himself and occupying the house; so that I could not get it.

I conducted negotiations also for the house known as the "Chipley house," a very large house, but the agent wanted too much rent. He wanted $600 a year. The party was to keep up the improvements, and it was a very expensive house, with three or four bathrooms. The judge refused to pay that amount of rent or take a lease for five years, which was required. There were several other propositions that I proposed, but which I could not conclude.

Q. Have you finished?

A. One of them was the Piaggio house.

Q. Have you now finished the answer?

A. Well, yes, sir; practically.

Q. When was it that you first made any inquiry?

A. As near as I can recall, it was in the winter of 1896.

Q. When was it that you last made any inquiry?

A. Terminating in the consummation of the lease of the Simmons property, with the interval—there was an interval in which I was not looking for property at all; that was the year——

Q. How long was that interval?

A. From the spring of 1898 until the winter of 1899.

Q. That was a little less than two years?

A. Well, a year and a half.

Q. About a year and a half. Prior to the fall of 1900 you found no house which Judge Swayne was willing to buy or lease?

A. No, sir; I found no house on which——

Q. Do you remember any place in Pensacola at which either Mrs. Swayne or any of the children stopped prior to 1900, except at the Escambia Hotel?

A. From 1896?

Q. From 1894.

A. I have some recollection of their stopping at Captain Northrup's, but it is not distinct.

Q. How often did he stop at Captain Northrup's—have you any recollection?

A. Whenever terms of court were held or whenever he was in the city.

Q. How often did Mrs. Swayne stop there?

A. Well, from 1896 I only recall once or twice, in my recollection, when she stopped there, but I am not certain about that as a detail.

Q. You were examined before the committee of the House of Representatives?

A. Yes, sir.

Q. And at that time you testified, did you not, as follows:

Q. You say during the period of eight years Judge Swayne was in Pensacola and Tallahassee, ready for business, four hundred and ninety days?

And in answer to that did you say:

A. No; I said the minutes show that the court was open, Judge Swayne present, four hundred and ninety days in the period of eight years.

Was that your answer?

A. Yes, sir; I stated that.

Q. And that was a fact?

A. In explanation of that I will say that when I prepared the data on which I made that statement I had gone hurriedly over the minutes and selected from them the dates on which the court appeared to be open. I have since gone carefully over those minutes and, I think, there is quite a number—probably fifteen, eighteen, or twenty days—which I overlooked in my first statement, which I was able to verify on my second, as days on which court had been open and Judge Swayne present.

Q. You have that statement here?

A. I have that certificate that I submitted to the managers when I first came here.

Mr. Manager PERKINS. That is all.

Reexamined by Mr. HIGGINS:

Q. You stated, in answer to the learned manager, that between some time in 1898 and some time in 1899, a period of about one and a half years, you did not make any search for a house?

A. Yes, sir.

Q. Why did you fix that period?

A. That period was the time that Mrs. Swayne and the Judge's family were in Europe——

Q. That was that time?

A. That is, the daughter and the youngest son.

Q. 1898 and 1899?

A. Yes; from the summer of 1898 until the summer of 1899.

Q. Do you know by correspondence where the Judge was when he was not in Pensacola at that time?

A. Yes, sir; I kept in constant correspondence with him.

Q. Where was he?

A. During the period beginning usually in September—not usually, but often in September—usually in October and reaching into June, and sometimes to July, he was almost constantly holding court, either at Pensacola or Tallahassee, or in Texas, Louisiana, or Alabama.

Mr. HIGGINS. That is all.

Reexamined by Mr. Manager PERKINS:

Q. You have here the records which show what courts Judge Swayne attended, have you not?

A. I submitted the certificate as to the courts in the northern district of Florida.

A. And you understand the records of the other courts are here?

A. Yes, sir; they were before the Judiciary Committee.

Mr. QUARLES. I should like to propound two questions.

The PRESIDING OFFICER. The Senator from Wisconsin propounds two questions, which will be read.

The Secretary read the first question of Mr. QUARLES, as follows:

Q. When did Judge Swayne move into the Blount property?

A. In October, 1903.

The Secretary read the second question of Mr. QUARLES, as follows:

Q. Has he continued to live there ever since?

A. Yes, sir.

The PRESIDING OFFICER. Are there further questions of this witness?

Mr. MALLORY. Mr. President, I have a question I should like to propound.

The PRESIDING OFFICER. The Senator from Florida propounds a question, which will be read by the Secretary.

The Secretary read as follows:

Q. Will you please state whether or not Judge Swayne could, with any reasonable effort, between 1894 and 1903, have secured a residence equally as good in character of construction, size, and location as that which he purchased of A. C. Blount, jr.?

A. I can only testify as to my own experience in negotiations. I think possibly such a residence could have been procured, but I was unable to get a satisfactory lease. My connection with the matter was only at the request of Judge Swayne, and I kept in constant correspondence with him about it.

Q. (By Mr. Manager PERKINS.) Will you state how much of the time since Judge Swayne purchased the Blount house in October, 1903, has Judge Swayne been in Pensacola?

Mr. HIGGINS. I do not want, Mr. President, to interpose

any unnecessary objection, but that seems to me to be quite beyond the time laid in the articles.

Mr. Manager PERKINS. That, perhaps, is in answer to the question put by one of the Senators, in response to which the witness said that since October, 1903, Judge Swayne had lived in the Blount house.

The WITNESS. I should like to amend my answer in that respect. It has just occurred to me.

Mr. Manager PERKINS. Very well.

The WITNESS. That in the fall of 1904 Judge Swayne did not return to this residence; that I know of my own knowledge that he has been under treatment in a Philadelphia hospital, and under the doctors almost continually since.

Q. When did he last leave Pensacola?

A. He left Pensacola, I think, some time in July, 1904.

Q. And has not been there since?

A. No, sir.

Mr. HIGGINS. Now, Mr. President, I could move to have that stricken out because it puts us to the necessity of evidence in reply; but it is all about a period that has not been brought up, and it has been since Judge Swayne has been under the advice of his present counsel here, and I think we might be exempted by our learned opponents from any such imputation.

Mr. Manager PERKINS. If it is immaterial, it does no harm.

The PRESIDING OFFICER. What is the particular answer which counsel desires to have stricken out?

Mr. HIGGINS. I will withdraw the request that it be stricken out.

Mr. BACON. Mr. President, there are several questions on one page which I desire to propound to the witness, and I ask that they be read in order.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read the first question of Mr. BACON, as follows:

Q. How long after pronouncing sentence upon Belden and Davis was it before you gave the commitment to the marshal? State the time approximately, as nearly as you can.

A. I should judge about fifteen to twenty minutes.

The Secretary read the second question propounded by Mr. BACON, as follows:

Q. Did anyone assist you in preparing the two commitments or tell you what to embrace therein? When were they prepared and written?

A. I prepared the two commitments as one document on the typewriter myself. All I had to do was to change or to leave out the name and insert it afterwards separately.

The Secretary read the third question propounded by Mr. BACON, as follows:

Q. Was it either in whole or in part before the contempt trial?

A. Not in the least; I had not the slightest suggestion as to what the result of that trial would be.

The Secretary read the fourth question propounded by Mr. BACON, as follows:

Q. The commitment of Davis is on page 242——

Mr. BACON. I am not sure that the witness's answer has covered the full inquiry, and I ask that the question be read over again.

The Secretary read the question, as follows:

Q. Did anyone assist you in preparing the two commitments or tell you what to embrace therein?

A. No, sir.

Mr. BACON. That is not the one. I want the other question read.

The Secretary read the question propounded by Mr. BACON, as follows:

Q. When were they prepared and written? Was it either in whole or in part before the contempt trial?

A. I should like to answer that question seriatim.

Mr. BACON. Certainly.

The Secretary again read the question, as follows:

Q. Did anyone assist you in preparing the two commitments or tell you what to embrace therein?

Mr. BACON. Mr. President, the question really involves several inquiries, and the witness very naturally desires that he may answer them seriatim. I therefore ask that the Secretary may read each part of the question alone, and let the witness answer.

The Secretary read as follows:

Q. Did anyone assist you in preparing that commitment?

Mr. BACON. The Secretary does not read the entire question. He is reading part of it.

The PRESIDING OFFICER. The Secretary is reading from the beginning of the question.

Mr. BACON. I beg pardon. I am speaking from memory. There are several parts of it there.

The Secretary read as follows:

Q. Did anyone assist you in preparing the two commitments?

A. No, sir.

The Secretary read as follows:

Or tell you what to embrace therein?

A. No, sir.

The Secretary read as follows:

When were they prepared and written?

A. Immediately after the conclusion of the trial.

The Secretary read as follows:

Was it either in whole or in part before the contempt trial?

A. Not at all; no portion of it was prepared or thought of before the trial.

The Secretary read the next question propounded by Mr. BACON, as follows:

Q. The commitment of Davis is on page 242 and the commitment of Belden is on page 248, which is more than a page of fine print. Please state how long it took you to prepare and write them.

A. I stated that from twenty minutes possibly to half an hour, because I am a very rapid typewriter myself.

Mr. BACON. Mr. President, it is the desire of Senators around me that the witness be requested to read that commitment at the present time. It is on the record. There are two of the commitments. If it is necessary, I will put my request in writing; but I address it to the Chair, not to the witness, in order that the Chair may give such directions as are proper.

The PRESIDING OFFICER. Is there a request that the witness read it?

Mr. BACON. It is the request of Senators around me. I am content that it be read by the Secretary. I want it read in connection with this testimony.

The PRESIDING OFFICER. If there be no objection, the witness will read.

Mr. BACON. I am perfectly content that the Secretary shall read it, Mr. President. I am only yielding to the suggestion of others.

The PRESIDING OFFICER. If there be no objection, the witness will read the commitment on page 242.

The witness read as follows:

United States of America, circuit court of the United States, fifth circuit, northern district of Florida.

The President of the United States to the marshal of the United States for the northern district of Florida, greeting:

Whereas at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the 11th day of November, A. D. 1901, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against Ezra T. Davis for causing and procuring, as attorney of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, to be issued from the said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involving a controversy in ejectment then pending in the said circuit court of the United States in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company and others were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the case of Florida McGuire *v.* The Pensacola City Company and others had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said ——— ——— that the allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit by Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract, and had no reason to believe that he or they were so interested, and knew or could easily have known that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit was instituted against the said judge on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said cause of Florida McGuire *v.* Pensacola City Company and others for a week or more, and after the said judge had announced to the counsel aforesaid that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the institution of the said suit against the said judge, cognizant of all the facts herein set forth.

Which charges were in violation of the dignity and good order of the said court and a contempt thereof.

And afterwards, to wit, on the 12th day of November, A. D. 1901, the said defendant having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was returnable at said time, was duly tried by the court upon his answer and the evidence of witnesses on the charges aforesaid in the said rule preferred, and a verdict of guilty was duly rendered by the said court against the said defendant, Elza T. Davis.

And afterwards, on the same day, our said court, by reason of the verdict aforesaid of the said court, did duly sentence the said Ezra T.

Davis to be imprisoned in the county jail of Escambia County, in the State of Florida, for and during the term and period of ten days from the 12th day of November, A. D. 1901, and further to pay a fine or penalty to the United States Government of $100, and that he stand committed until the terms of said sentence be complied with, or until he be discharged by due course of law.

The said jail being the place duly selected for the imprisonment of persons convicted of offenses against the laws of the United States in the courts thereof, in said northern district of Florida.

Now, therefore, you, the said marshal, are hereby commanded to convey to the said jail at Pensacola, in the State of Florida, the body of the said Ezra T. Davis, and deliver him to the keeper thereof.

And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said Ezra T. Davis, the person aforesaid, into your custody, and him, the said Ezra T. Davis, keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and period of ten days from the 12th day of November, 1901, and until the said fine of $100 be paid, or until he be discharged by due course of law.

Herein fail not at your peril. And make due return of what you shall do in the premises and of this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Pensacola, in said district, this 12th day of November, A. D. 1901.

[SEAL.] F. W. MARSH, *Clerk*.

Mr. PATTERSON. Mr. President, I desire to propound a question to the witness.

Mr. BACON. Mr. President, I will not ask that the witness read the other commitment, which is identical with the one he has read.

Mr. SPOONER. Mr. President, if the Senator from Colorado [Mr. PATTERSON] will permit me a moment, I understood the witness to testify that he prepared these commitments on the typewriter, at the same time leaving a blank in the names and filling in after the names.

The PRESIDING OFFICER. The Presiding Officer so understood. The Reporter can read the answer.

The WITNESS. I think I had blank forms of that particular form, and I think I used it in this case. I am not certain, though, about that.

Mr. SPOONER. I wanted to verify the accuracy of my hearing, that is all. I should like the stenographer to read that portion of the answer of the witness before the questions were put to him a second time.

The PRESIDING OFFICER. The Reporter will read the answer in which the witness stated how long it took him to prepare the commitments.

Mr. BACON. I recall the fact now, and it is not necessary to have the Reporter read. The witness said he prepared the commitments, leaving blanks, and inserting the names afterwards.

The PRESIDING OFFICER. Does the Senator from Wisconsin wish the answer read?

Mr. SPOONER. I do not.

Mr. PATTERSON. I have some questions to propound.

The Secretary read as follows:

Q. Had you ever prepared a commitment for contempt before?

A. No, sir.

The Secretary read as follows:

Q. Did you have any printed form from which to prepare the commitment?

A. I had a printed form which followed the language used in this—I am not certain whether I used it or not—all excepting the charging clause. That is a blank space which I always fill in.

Mr. TALIAFERRO. I should like to propound a question to the witness.

The PRESIDING OFFICER. The Senator from Florida propounds a question, which will be read.

The Secretary read as follows:

Q. Do you hold any other positions on the appointment of Judge Swayne besides clerk of the district court? If so, state what they are and how long you have held them.

A. I am United States commissioner at Pensacola now. The position became vacant last summer, and I was appointed, with the consent of the Attorney-General, which is the requirement of the law.

The PRESIDING OFFICER. Is there anything further desired of this witness?

Mr. HIGGINS. I have one or two questions only. [To the witness.] You said you used a printed form. I will ask you whether or not it is such printed form as is used in the ordinary case of the commitment of a person convicted of a crime?

A. Yes, sir; wherever there is a jail sentence.

Q. Is it a form that is sent you by the Department of Justice among its printed matter or is it one that you have prepared yourself out of some form book?

A. It is a copy of the form used by the clerk in New Orleans. That is where I got it from. The Department does not furnish such forms.

Reexamined by Mr. Manager OLMSTED:

Q. You have testified that in making out this commitment you used a printed form?

A. I am not certain about that; no, sir.

Q. Will you kindly look at page 242 and tell me what part of the commitment is contained in any printed form that you ever saw before you made this out?

A. The first three or four lines follow in a general way the form with the exception that in the regular form there is a space left for the presentment——

Q. Just read the part that is in the regular form.

A. The venue and then the direction:

The President of the United States to the marshal of the United States for the northern district of Florida, greeting.

That is part of the regular form; and—

Whereas at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the — day of ———, A. D. ——.

Down to there.

Q. That is the end of the printed form?

A. Then beginning after the paragraph marked "4."

And afterwards, to wit, on the — day of ———, A. D. ——, the said defendant——

Then blank.

Mr. Manager OLMSTED. Hold on. I do not find that.

Mr. HIGGINS. It is on page 243, about one-third way down.

A. In the form there are blank spaces left to fill in to cover the case.

Q. (By Mr. Manager OLMSTED). All this long matter commencing on page 242, after the figures "1901," you composed yourself?

A. Yes, sir.

Q. Did you sit right down at the typewriter, without writing it out on paper, and then play it off on the machine as you would a piano?

A. No, sir; I had the rule. This is a copy of the rule, or almost a copy of the rule. I took it verbatim from the rule.

Q. Who helped you in preparing that commitment?

A. No one.

Q. Who wrote out any part of it?

A. No one, except myself.

Q. Who told you to prepare it?

A. No one.

Q. How did you happen to prepare it?

A. I always prepare commitments when prisoners are sentenced, as a matter of course, without any specific direction. That is part of my duty, as I understand it.

Mr. Manager OLMSTED. That is all.

By Mr. HIGGINS:

Q. Looking at page 243, I will ask whether or not in the printed blank there is included the part which begins—

Now, therefore, you, the said marshal, are hereby commanded to convey.

A. All of that following the charging part, the figure "4" in that paragraph excluded, beginning with the next paragraph, follows the form, I think. I will state that I am not sure that I filled this particular commitment on a form, but I did have before me the form and followed the form in the phraseology.

Mr. HIGGINS. That will do.

Mr. MALLORY. I could not catch the answer of the witness, and rather than go to the trouble of having it read I will submit another question.

The PRESIDING OFFICER. The Senator from Florida propounds a question, which will be read.

The Secretary read as follows:

Q. Are you not court commissioner of the circuit court under Judge Swayne?

A. There is no such office now. It was abolished some years ago. The position is that of United States commissioner, and the appointment is made by the district judge. In cases where the clerk is appointed it must be done with the consent of the Attorney-General, and that method was followed in my appointment last summer—I think it was.

The Secretary read as follows:

Q. What are the duties of such commissioner?

A. A committing magistrate in criminal charges only.

The PRESIDING OFFICER. Is there anything further wanted of this witness? If not, he will be excused. Are there further witnesses on the part of the respondent?

Mr. HIGGINS. Just one, Mr. President. Call Mr. Henry G. Swayne.

Henry G. Swayne sworn and examined.

By Mr. HIGGINS:

Question. Where is your residence?

Answer. Philadelphia, at the present time.

Q. What is your occupation?

A. Attorney at law.

Q. How long have you been a member of the bar?

A. Since the fall of 1898.

Q. Do you recall the time of the passage of the act of Congress curtailing the northern district of Florida?

A. Yes, sir.

Q. July, 1894? Where were your father and family residing at that time?

A. St. Augustine, Fla.

Q. You were not there that year?

A. I was there at that time; that summer.

Q. State what you know as to any facts or acts of Judge Swayne with reference to making his residence at Pensacola.

Mr. Manager PERKINS. We must object to the form of the question. I do not object to counsel asking him what he did, or to asking something specific.

Mr. HIGGINS. I do not want to lead the witness. I am asking in the widest way.

Mr. Manager PERKINS. It is so wide that heaven knows what the witness will answer, whether his answer will be relevant or irrelevant.

Mr. HIGGINS. I will limit it as to making a residence at Pensacola, or making a residence anywhere.

A. Immediately after the passage of the act, or within a few days thereafter, he left the home in St. Augustine and went to Pensacola, declaring that he was——

Mr. Manager PERKINS. That comes from not asking questions.

Mr. HIGGINS. He did not state what the declaration was.

Mr. Manager PERKINS. I do not object to his stating what Judge Swayne did.

Mr. HIGGINS. I offer to prove by this witness what the judge declared at the time; and I should like to know if the manager objects.

Mr. Manager PERKINS. We object. That is easily answered.

Mr. HIGGINS. The sense of the Senate has been taken on that question this morning, and I suppose we can not go into it.

The PRESIDING OFFICER. The Presiding Officer understands that counsel propose to prove the declaration of Judge Swayne made at the time when he left his home in St. Augustine as to where he was going to make his home.

Mr. HIGGINS. Yes, sir; that is the offer.

Mr. Manager PERKINS. And it is objected to. It is the same question we had up this morning.

The PRESIDING OFFICER. The Presiding Officer thinks that may be done. If any Senator desires, he will submit the question to the Senate.

Mr. Manager PERKINS. I suggest that as I understood the ruling this morning on a similar question asked a gentleman from Philadelphia as to what Judge Swayne had stated in reference to his intention——

The PRESIDING OFFICER. This is a declaration made at the time he left his home in St. Augustine as to where he intended to take up his home on leaving the St. Augustine home.

Mr. Manager PERKINS. But it is his own declaration. It is proving his intention by his own declaration, repeated by another witness. I think it is exactly the point that was made this morning.

The PRESIDING OFFICER. If any Senator desires, the Presiding Officer will submit the question to the Senate. [A pause.] The Presiding Officer thinks it part of the res gestæ.

Mr. HIGGINS (to the Reporter). Please read the question to the witness.

The Reporter read as follows:

Q. State what you know as to any facts or acts of Judge Swayne with reference to making his residence at Pensacola.

Mr. Manager PERKINS. I dislike to be technical, but the question is in such form that I can not anticipate what is to come. Do I understand that the witness went with Judge Swayne to Pensacola?

Mr. HIGGINS. The witness is now undertaking, under the decision of the President of the Senate, to state what Judge Swayne declared when he left St. Augustine.

Mr. Manager PERKINS. Not at all.

The WITNESS. That is it.

Mr. Manager PERKINS. He is undertaking to say that Judge Swayne went to Pensacola——

The PRESIDING OFFICER. Will the Reporter read the question again?

The Reporter read as follows:

Q. State what you know as to any facts or acts of Judge Swayne with reference to making his residence at Pensacola.

The PRESIDING OFFICER. Change the form of the question so as to read "with reference to changing his residence from St. Augustine."

Q. (By Mr. HIGGINS.) With reference to changing his residence from St. Augustine.

Mr. Manager PERKINS. Do I understand the President to rule that the witness may state that Judge Swayne went to Pensacola because he told him he went there? It would be hearsay evidence.

The PRESIDING OFFICER. The Presiding Officer understands that the witness is about to testify to a statement made by Judge Swayne at the time he was giving up his home in St. Augustine; and that the Presiding Officer thinks the witness may state.

Mr. HIGGINS. Please proceed.

A. The statement in full which was made by Judge Swayne at the time, as I recollect it, was that the bill dividing the district or redistricting the State, whichever it was, had just passed Congress and been signed by the President, and that he would be compelled to make his residence within the boundaries of his district, and that he was going to go to Pensacola; and with that declaration he left St. Augustine that summer in the month of July. I was there, having gone down after my collegiate year was over, from Philadelphia, and I, with the other members of the family——

Mr. Manager PERKINS. Do you seek to——

A. Went north at a later date, Judge Swayne coming from Pensacola for his summer vacation.

Q. (By Mr. HIGGINS.) You then, I understand, went north with the rest of the family. Did that include your mother?

A. My mother, my sister, and my brother.

Q. Where did you go?

A. We went to Guyencourt, Del.

Q. That is the residence of your grandmother?

A. Of my grandmother.

Q. Did I understand you to say that Judge Swayne came there from Pensacola?

A. Within a week or ten days; yes, sir.

Q. Mr. Swayne, of course you are familiar with all the movements of your father's family?

A. I am. I was in correspondence continually ever since I left home in 1891 to go to college. I have refreshed my memory from old letters which I have in my possession.

Q. Did you or not have an intimate and familiar family knowledge of the whereabouts all the time of your mother and father and brother and sister?

A. Continuously; yes, sir.

Q. Will you please state how long your mother, brother, and sister remained as residents at St. Augustine?

Mr. Manager PERKINS. I object to the form of the question, because it asks him how long they were residents. Ask how long they remained.

Mr. HIGGINS. Very well. [To the witness.] How long did they remain there?

A. During the winter time and fall and spring of the year they spent their time in St. Augustine, with the exception of certain visits made elsewhere, until the summer of 1896.

Q. (By Mr. HIGGINS.) Until the summer of 1896?

A. Yes, sir.

Q. Did they continue their occupancy of any residence, any house there, after that?

A. Not after that.

Q. That terminated it?

A. That terminated their occupancy of any residence in St. Augustine or any house there.

Q. Where did they stay, live, abide after that, up to the time it has been testified here that they went to Europe?

A. Up to the summer of 1898. The winter of 1896 and 1897 they were part of the time in New Orleans, part of the time in Chester County, Pa., visiting some relatives, part of the time, in the fall of the year, at Guyencourt, Del., and part of the time in Philadelphia, Pa. I think they were also in New York that same year; in the spring of the year. That brings them to the summer of 1897?

Q. Yes.

A. The summer of 1897 was spent as usual, a portion of it at Guyencourt, and in the fall of 1897 they went South, I believe and understand, especially, I mean from letters received from them. I learned they were in New Orleans. They were there

at the time of the Mardi Gras, and spent most of the winter there. In the early summer of 1898 they came North.

Q. I will interrupt you at this point to ask whether or not at the time they were at New Orleans Judge Swayne was holding court there?

A. It was; yes, sir. He was sitting on the circuit court of appeals in New Orleans nearly all of one winter, I believe, and he was also holding circuit or district court there at another time. Whether it was that same winter or not I do not know.

Q. Now, go on with your statement after that as to where the family were.

A. In the summer of 1898 I graduated from the law school of the University of Pennsylvania, in June, about the 9th of June, I believe. They arrived in Philadelphia from the South a day or two before that, and attended the graduation exercises. In July of that year the whole family, including Judge Swayne and myself, sailed for Europe, and after traveling around for a considerable extent Judge Swayne and I left my mother and brother and sister in Dresden, Germany, and on the 1st of September started our journey homeward, reaching New York the latter part of September. Judge Swayne came with me to Philadelphia. I think he visited Guyencourt for a day or two, and then went to Florida.

He was at various times that year, previous thereto and subsequent thereto, after beginning, I think, with the fall of 1895, holding court at Waco, Dallas, Tyler, New Orleans, Birmingham, Huntsville, in the States of Louisiana, Texas, and Alabama. He went to Florida shortly, within a few days, after our return from Europe, and was there and at other places holding court, which information I may say I gather from my correspondence, until the summer of 1899. He came north in June, 1899, for his usual summer vacation, and he and I met the other members of our family—mother, brother, and sister—in Philadelphia in July of that year.

Q. On their return from Europe?

A. On their return from Europe. As nearly as I can recollect, the major portion of that summer was spent at Guyencourt, Del., until September. In that month—it may have been the early part of October—Judge Swayne went to Huntsville, Ala., to hold court and returned to Philadelphia on the 4th or 5th of November of that year, 1899, to attend my wedding, which took place upon the 9th of November.

Upon the 10th of November my wife and I started for Cuba, and Judge Swayne accompanied us as far as Jacksonville, leaving us there, taking the train. I saw him get on the train which runs to Pensacola.

Subsequently in Cuba I received letters from him at Pensacola during that winter. In the spring of 1900, or early summer of 1900, I returned from Cuba, and my wife and I took up our residence temporarily at Guyencourt. Judge Swayne visited there that summer, as he had done previously, and also members of the family.

I believe I neglected to state where the members of the family were after they came back from Europe.

Mr. HIGGINS. I was going to ask you that question.

A. They came back in July, 1899, and at the time of my marriage I was living in a house in Wilmington, on Market street, No. 1223, and my mother and brother and sister occupied that house during a portion of that winter. A portion of the winter they spent, I believe, in New Orleans, at the time of the Mardi Gras. Also, if my recollection serves me, my mother visited Judge Swayne in Texas, at Dallas and at Tyler, in 1897, the winter of 1897, for a while. I know I visited Judge Swayne there in the summer of 1896.

Q. (By Mr. HIGGINS.) Where?

A. Dallas, Tex. He was holding court at that point at the time. It was my custom, when college was over, to go South for possibly a month. I also went South frequently at Christmas time, just for the holidays.

Q. Did you visit him after 1896—I will confine your attention in the first instance to the ensuing year—at any place?

A. I visited him at Pensacola.

Q. At what time?

A. In the summer time, in the month of June.

Q. What year?

A. If my recollection serves me, it was 1895.

Q. I am asking after 1896. You visited him there, you say, in 1895?

A. I visited him there after 1896; in the spring of 1899.

Q. Were you there in 1896 at all?

A. I was in Pensacola in 1896; yes, sir.

Q. For how long?

A. For a few days.

Q. Where did you stay?

A. I stayed at Mrs. Northrup's.

Q. Where was Judge Swayne staying?

A. At Mrs. Northrup's.

Q. Was anyone of your family besides you there?

A. Not at that time.

Q. At any time?

A. In April of that year my sister visited him, and I fortunately ran across the letter in which he announced that fact when writing to me.

Q. What is the date of that letter?

A. The fourth month, the 17th day; Pensacola, Fla.

Mr. Manager PERKINS. You do not offer the letter?

Mr. HIGGINS. It contains other matters.

Mr. Manager PERKINS. You do not offer the letter in evidence?

Mr. HIGGINS. To refresh the witness's recollection.

Mr. Manager PERKINS. He has given that.

The WITNESS. In that letter——

The PRESIDING OFFICER. The Presiding Officer does not think the letter of the witness's sister——

The WITNESS. It is the letter of Judge Swayne to me, from Pensacola.

Q. (By Mr. HIGGINS.) Refreshing your recollection by that letter, will you state whether or not she was visiting him at that time?

A. She was visiting him at that time, at Captain Northrup's house. I may state further that when I was visiting there—I think it was in 1896—either Mrs. Northrup or her husband said to me——

Mr. Manager PERKINS. You do not offer that? You do not seek to give——

The PRESIDING OFFICER. What Mr. Northrup said can hardly be evidence.

Mr. HIGGINS. Only to this extent: He was particularly interrogated, and so was Mrs. Northrup, as to whether or not any room in his house was called Judge Swayne's room. They said it was not. That is subject to be otherwise proved.

Mr. Manager PERKINS. Then you must lay a foundation to contradict. My friend knows if he is going to contradict a witness he must call the witness's attention to the point, and that he did not do.

Mr. HIGGINS. No; I did not.

Mr. Manager PERKINS. He certainly did not.

Mr. HIGGINS. That is true. [To the witness.] You may omit any statement of that, Mr. Swayne. Now, in the year 1897, before you went to Europe, were you or not visiting Judge Swayne in Florida; and if so, where?

The WITNESS. You mean in 1898?

Mr. HIGGINS. No; you went to Europe in 1899.

The WITNESS. We went to Europe in 1898.

Mr. HIGGINS. I mean in 1897.

The WITNESS. In 1897?

Mr. HIGGINS. Yes, sir.

A. I visited him in 1897, at Pensacola, at Christmas time, for a week or ten days.

Q. Where was he staying then?

A. If my recollection serves me, he was staying at the Escambia Hotel.

Q. Were any other members of the family there with you?

A. That I can not say.

Q. Do you know of your mother or sister or younger brother being there during the times you have spoken of?

A. Once; yes, sir.

Q. When?

A. That I can not place. I have nothing to refresh my recollection as to which time it was.

Q. Do you know of any of them visiting him while he was holding court at New Orleans or in Texas or Alabama?

A. I do.

Q. State what.

A. My mother and my sister at different times had visited him when holding court at other points, and I have already stated that in the winter of 1897 and '98 they visited him in New Orleans, or were with him in New Orleans, nearly all the winter.

I will correct a statement just made. I said I spent Christmas with him in Pensacola in 1897. It was not at Christmas time. If my recollection serves me right, it was Thanksgiving. I am not positive about that. I may be mistaken. I may be mistaken as to the particular year.

Q. You were speaking of a time when, as I understood it, the family were staying in Wilmington and you were not there yourself. For what reason were you not there?

A. I was away on my wedding trip. I went to Cuba in November, 1899, on my wedding trip, starting the 10th of November.

Q. Were you delayed there for any cause?
A. My wife and I had yellow fever and were hauled off to the hospital, and we were advised when we were through with the yellow fever that it would be dangerous to return to a cold climate, for fear of taking pneumonia. So we stayed in Cuba until the weather got warm in this part of the country.
Q. What year was that?
A. It was in 1899 and the spring of 1900.
Q. Where were your mother and sister during that year?
A. The greater portion of the winter, I believe, they spent—I know they spent—at my house in Wilmington. My brother was at his first year in college that year.
Q. What college?
A. The University of Pennsylvania, Philadelphia.
Q. Did you graduate there?
A. In the academic department in 1895 and the law department in 1898.
Q. Will you state whether or not at any time during this period your brother was stricken with disease?
A. Yes, sir.
Q. When, and what?
A. First he had an attack of blood poisoning, followed by nervous prostration, and he was seriously ill for a considerable time.
Q. At what time of the year was it?
A. That was just before what was called the February examination.
Q. In what year?
A. I will not be sure what year. I think it was 1901.
Q. Do you know what year your father and family went into the occupation of the Simmons house?
A. I will have to think a minute.
Q. If you can not say directly——
A. I can not say definitely what year.
The PRESIDING OFFICER. Is there any question about that?
Mr. Manager PALMER. No, sir.
The WITNESS. I know I visited there at various times after they did occupy the Simmons cottage.
Q. (By Mr. HIGGINS.) You did?
A. Yes, sir.
Q. Was anyone with you?
A. My wife was with me after 1899.
Q. That was the year of your marriage?
A. Yes, sir; that was the year of my marriage.
Q. Now, one other question only. Since July, 1904, please state whether or not your father, Judge Swayne, has or has not been under medical attendance.
A. Continuously; yes, sir.
Q. Where?
A. A part of the time at the University of Pennsylvania Hospital, in Philadelphia; a portion of the time at Milton Jackson's residence, in Philadelphia, where he was very ill, not expected to live, and continuously under the care of Dr. Edward Martin, a noted physician of Philadelphia, who had been treating him, to my knowledge, one or twice a week all of that time.
Q. Mr. Swayne, was he a part of that time at your house in Wilmington, before you moved to Philadelphia?
A. He was; yes, sir. He was there, and would go to Philadelphia for treatment regularly.
Q. In what month was he at the hospital in the year 1904, this last year?
A. I believe it was the month of September or October, for three weeks. Immediately following that he was confined to his bed at Milton Jackson's, he having left the hospital.
The PRESIDING OFFICER. The Presiding Officer does not see how this is important, as the witness has testified that the respondent had been continually under medical treatment since a certain date.
Q. (By Mr. HIGGINS.) I want to lay the ground for one other question, and that is whether or not at the time, just before his coming out of the hospital, his condition was not a critical one as to his surviving or not?
The WITNESS. Yes, sir; very critical.
Q. Since the renewal of the examination before the House Judiciary Committee in these impeachment proceedings and the preparation of this trial, was or was not Judge Swayne staying at your house?
A. He was; all the time.
Q. Until you moved to Philadelphia?
A. All the time before.
Q. And his presence has been there on that account?
A. Yes, sir.
Mr. HIGGINS (to Mr. Manager PERKINS). Cross-examine.

Cross-examined by Mr. Manager PERKINS:

Q. Only a question or two. I understood you to say that your mother and sister at certain times——
A. My mother, sister, and brother.
Q. Very well. Your mother, sister, and brother at certain times visited Judge Swayne when he was holding court in Pensacola?
A. Yes, sir.
Q. And that they visited Judge Swayne when he was holding court at New Orleans?
A. Yes, sir.
Q. And at various other places?
A. Yes, sir.
Mr. Manager PERKINS. I guess that is all.

Reexamined by Mr. HIGGINS:

Q. Did you say while he was holding court at Pensacola?
A. At various times at Pensacola, I intended to state. Whether he was holding court there or not I did not know nor do I know. He may have been holding court, and court may not have been in session. I know that he was there. I know that times when I was visiting there sometimes he was not holding court. I know that he went on little excursion trips with me in the country, hunting, and on the bay, sailing, at times when court was not in session.
Mr. HIGGINS. That will do, sir.

Reexamined by Mr. Manager PERKINS:

Q. Were you ever there more than a week or ten days prior to 1900 at one time?
A. Prior to 1900?
Q. Yes.
A. Not that I recollect, sir.
Mr. Manager PERKINS. That is all.
Mr. THURSTON. I call Mr. McGourin on one point.

Thomas F. McGourin recalled.

By Mr. THURSTON:

Question. You have already testified that you are United States marshal and have been for some years?
Answer. Yes, sir.
Q. Does the Department of Justice send to you, as United States marshal, blanks upon which judges' certificates are to be made to secure their pay for travel and attendance?
A. When out of their district?
Q. When out of their district.
A. Yes, sir.
Q. (Handing paper to witness.) I will ask you if that is the form that the Department of Justice sends to you for that purpose?
A. (Examining.) That is the form.
Mr. THURSTON. We offer that in evidence.
Mr. Manager PALMER. We have no objection to that.
The PRESIDING OFFICER. It may be put in the record without reading.
The paper referred to is as follows:

UNITED STATES OF AMERICA, ——— *district of* ———, *ss:*

I, ——— ———, district judge of the United States for the ——— district of ———, do hereby certify that I was directed to and held court at the city of ———, in the ——— district of ———, ——— days, commencing on the — day of ———, 189—; also that the time engaged in holding said court and in going to and returning from the same was ——— days, and that my reasonable expenses for travel and attendance amounted to the sum of ——— dollars and ——— cents, which sum is justly due me for such attendance and travel.

——— ———.

———, *189—*.

Received of ——— ———, United States marshal for the ——— district of ———, the sum of ——— dollars and ——— cents, in full of the above account.
$———.] ——— ———.

Mr. THURSTON. That is all.
Mr. HIGGINS. That is all, Mr. McGourin.
Mr. THURSTON. Mr. President, we are unable to agree as to what the certificates show as to the number of days that Judge Swayne held court in the various districts from time to time. I, therefore, am compelled to offer these certificates [producing papers] from the clerks of the various courts, and I would be more than willing to have the Secretary or some disinterested party make the computation from them and let that computation be put in the record instead of the certificates.
Mr. Manager PALMER. That is all right. I have no objection to that. The objection to the certificates is that they are duplicated; that is to say, the certificates of the circuit court clerk and the certificates of the district court clerk are for the same time, and they make up an aggregate of eight hundred odd days, when in point of fact they are less than that. I have gone over these certificates and made a record of what they con-

tain, and I have no objection whatever to some disinterested party going over them and ascertaining the number of days that Judge Swayne held court out of his district, and the number of days he held court in the district as ascertained by the certificates. Of course you must count the same days in both the circuit and district court when they are one and the same.

The PRESIDING OFFICER. The Presiding Officer does not know who can make the computation or how it can be made except by counsel themselves or the managers.

Mr. Manager PALMER. So far as we are concerned, we will consent that the Presiding Officer shall appoint somebody who shall make the computation.

The PRESIDING OFFICER. The Presiding Officer has no such power.

Mr. Manager PERKINS. I suggest that it is unnecessary to print the certificates by which the judge authorized Judge Swayne to hold court. We raised no question about that. The certificates as to the amount of time employed are very short, and it will appear upon an examination how many days are duplicated.

Mr. THURSTON. On that statement of the honorable manager, then, I will ask that only so much of these statements as cover the days and dates when Judge Swayne was holding court be put in the record.

Mr. Manager PERKINS. Very well.

Mr. Manager PALMER. And not the certificates of the judges authorizing him to hold court.

Mr. Manager PERKINS. Take out all the certificates authorizing holding courts.

Mr. THURSTON. Mr. President——

The PRESIDING OFFICER. One moment. The Presiding Officer is at a loss to understand how the Reporter or the Secretary can make this computation of days about which manager and counsel disagree.

Mr. THURSTON. We are not asking that now, Mr. President——

Mr. Manager PERKINS. Put in the certificates themselves as to the days.

Mr. THURSTON. So much of each certificate as shows the days and the places.

The PRESIDING OFFICER. Will the managers and counsel instruct the Reporter as to how much shall appear in the RECORD, and if more than one certificate, specify what portion of the certificate it is desired shall be put in the RECORD?

Mr. THURSTON. Then, Mr. President, there is very little to these certificates except the dates, and we will offer them here and let them all go in.

The PRESIDING OFFICER. Is it desired that the entire certificate shall be printed in the RECORD?

Mr. THURSTON. In the RECORD.

The certificates referred to are as follows:

In the circuit court of the United States for the northern district of Texas.

I, J. H. Finks, clerk of the circuit court of the United States for the northern district of Texas, do hereby certify that the records of the United States circuit court for the northern district of Texas, at Fort Worth, Tex., show that the Hon. Charles Swayne, United States district judge for the northern district of Florida, held court at Fort Worth (by designation of the Hon. A. P. McCormick, United States circuit judge) on each of the following days, viz: 1897, March 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, the same being the March term, 1897, of said circuit court.

In testimony whereof witness my hand officially and the seal of said circuit court, at Fort Worth, Tex., this the 6th day of February, A. D. 1905.

[SEAL.] J. H. FINKS,
Clerk of said Court.
By J. B. FINKS,
Deputy.

EXHIBIT A.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Whereas it appears by the certificate of J. H. Finks, esq., clerk of the circuit and district courts of the United States in and for the northern district of Texas, that the Hon. John B. Rector, United States district judge for said district, is prevented by physical disability from holding the stated terms of said courts at Waco, Tex., to convene on November 18, 1895; and

Whereas in my judgment the public interests require the designation and appointment of the judge of some other district in the fifth circuit to hold said terms of court and to discharge all the judicial duties of the judge of said district pertaining thereto:

Now, therefore, I, Don A. Pardee, circuit judge of the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, judge of the northern district of Florida, to hold the said terms of the circuit and district courts at Waco, Tex., in said northern district, and to discharge all the judicial duties pertaining thereto, pending the disability of the said John B. Rector, district judge of said district as aforesaid.

Witness my hand this 16th day of November, 1895.

(Signed) DON A. PARDEE, *Circuit Judge.*

THE UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. Don A. Pardee, United States circuit judge for the fifth circuit, designating and appointing the Hon. Charles Swayne, United States district judge, to hold the November term, 1895, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as the same remains of record in my office at Waco, in circuit court minute book, vol. 3, page 562, and in district court minute book, vol. 2, page 301.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.] D. H. HART, *Clerk,*
By J. B. MCCULLOCH, *Deputy.*

EXHIBIT B.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Whereas it has been made known to me by the certificate of the clerk that the Hon. John B. Rector, United States district judge for the northern district of Texas, is prevented by physical disability from holding the stated terms of the district and circuit courts of the United States for the northern district of Texas, at Waco, to begin on April 13, 1896, and whereas, in my judgment, the public interests so require: Therefore,

I, Andrew P. McCormick, United States circuit judge for the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, United States district judge for the northern district of Florida, in the place and stead of the Hon. John B. Rector, district judge, to hold said district and circuit courts of the United States, at Waco, Tex., beginning on April 13, 1896, and to discharge all the judicial duties of the Hon. John B. Rector, district judge, while acting under this designation.

Witness my hand this 31st day of March, 1896.

(Signed) ANDREW P. MCCORMICK,
Circuit Judge.

THE UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. Andrew P. McCormick, United States circuit judge for the fifth circuit, designating and appointing the Hon. Charles Swayne, United States district judge, to hold the April term, 1896, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as same remains of record in my office at Waco, in circuit court minute book, vol. 3, page 616, and in district court minute book, vol. 2, page 355.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.] D. H. HART, *Clerk.*
By J. B. MCCULLOCH, *Deputy.*

EXHIBIT C.

The UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Whereas in my opinion the accumulation of business in the district and circuit courts of the United States for the northern district of Texas requires the designation and appointment of another judge in aid of the judge of said district;

Now, therefore, I, Andrew P. McCormick, United States circuit judge for the fifth judicial circuit, in accordance with the provisions of section 592 of the Revised Statutes of the United States, do hereby designate and appoint the Hon. Charles Swayne, United States district judge for the northern district of Florida, in aid of the Hon. John B. Rector, United States district judge for the northern district of Texas, to hold the terms of said courts at Waco, Tex., beginning on the third Monday of November, 1896, and the terms of said courts at Dallas, Tex., beginning on the second Monday in January, 1897, and to have and exercise in the northern district of Texas during the time of this designation the same powers that are vested in the judge thereof.

Witness my hand at office in Dallas, Tex., this the 4th day of November, A. D. 1896.

(Signed) A. P. MCCORMICK,
United States Circuit Judge.

The UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. A. P. McCormick, United States circuit judge for the fifth circuit, designating and appointing the Hon. Charles Swayne, United States district judge, to hold the November term, 1896, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as same remains of record in my office at Waco, in circuit court minute book, volume 4, page 16, and in district court minute book, volume 2, page 383.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.] D. H. HART, *Clerk,*
By J. B. MCCULLOCH, *Deputy.*

EXHIBIT D.

THE UNITED STATES OF AMERICA, *Fifth Judicial Circuit:*

Whereas it has been made to appear to me from the certificate of the clerk of the district court of the United States for the northern district of Texas, under the seal of said court, that the Hon. John B. Rector, United States district judge for said district, is prevented by physical disability from holding the stated terms of the district and circuit courts of the United States in and for the northern district of Texas, to be begun and held at Waco, Tex., on the second Monday in April, 1897; and

Whereas, in my judgment, the public interests so require; now, therefore, I, Andrew P. McCormick, United States circuit judge for the

fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, United States district judge for the northern district of Florida, to hold the said terms of said circuit and district courts of the United States in the northern district of Texas, at Waco, Tex., beginning on the second Monday in April, 1897, and to discharge all the judicial duties of the said judge so disabled, during the time of this designation, in accordance with the provisions of section 591 of the Revised Statutes of the United States.

(Signed) ANDREW P. MCCORMICK,
Circuit Judge.

DALLAS, TEX., *March 27, 1897.*

THE UNITED STATES OF AMERICA, *Western District of Texas:*

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. Andrew P. McCormick, United States circuit judge for the fifth circuit, appointing and designating the Hon. Charles Swayne, United States district judge, to hold the April term, 1897, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as same remains of record in my office at Waco, in Circuit Court Minute Book, vol. 4, page 123, and in District Court Minute Book, vol. 2, page 432.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.] D. H. HART, *Clerk,*
By J. B. MCCULLOCH, *Deputy.*

THE UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the circuit court of the United States for the western district of Texas, do hereby certify that in pursuance of an order of the Hon. Don A. Pardee, circuit judge of the United States for the fifth judicial circuit, dated November 16, A. D. 1895, and duly entered of record in the minutes of this court at Waco, in volume 3, page 562, a true copy of same duly certified being attached hereto, marked "Exhibit A," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the November term, 1895, of the United States circuit court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, December 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 21, A. D. 1895.

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 31, 1896, and duly entered of record in the minutes of this court at Waco, in volume 3, page 616, a true copy of same duly certified being attached hereto, marked "Exhibit B," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the April term, 1896, of the United States circuit court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 27, 28, 29, 30, May 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16, A. D. 1896.

I further certify that in pursuance of an order of the Hon. A. P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated November 4, 1896, and duly entered of record in the minutes of this court at Waco, in volume 4, page 16, a true copy of same duly certified being attached hereto, marked "Exhibit C," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the November term, 1896, of the United States circuit court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, and 30, December 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, and 19, A. D. 1896. (On November 16 and 17, 1896, Judge Swayne not being present, court was opened and closed by the United States marshal.)

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 27, 1897, and duly entered of record in the minutes of this court at Waco, in volume 4, page 123, a true copy of same duly certified being attached hereto, marked "Exhibit D," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the April term, 1897, of the United States circuit court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 20, 21, 22, 23, 24, 26, 27, 28, 29, and 30, May 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15, A. D. 1897. (On April 12, 1897, by written order of Hon. Charles Swayne, the court was adjourned by the United States marshal until April 20, 1897.)

I further certify that after a careful examination of the records of this court at Waco I find no record of any term of said court, or any portion of any term, special or otherwise, having been held by the said the Hon. Charles Swayne, United States district judge as aforesaid, between and including the years 1894 and 1903.

I further certify that upon the various dates above mentioned upon which the respective terms of court were held at the Waco division by the Hon. Charles Swayne the said Waco division was included in the northern judicial district of Texas, but by act of Congress same was, on the 1st day of July, A. D. 1902, transferred to and made a part of the western district of Texas, and is now included in said last-named district.

In witness whereof I hereto affix my official signature and the seal of said circuit court at my office in the city of Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.] D. H. HART, *Clerk.*
By J. B. MCCULLOCH, *Deputy.*

THE UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the district court of the United States for the western district of Texas, do hereby certify that in pursuance of an order of the Hon. Don A. Pardee, circuit judge of the United States for the fifth judicial circuit, dated November 16, A. D. 1895, and duly entered of record in the minutes of this court at Waco, in volume 2, page 301, a true copy of same duly certified to being attached hereto, marked "Exhibit A," the Hon. Charles Swayne, United States district judge for the northern district of Florida did convene and hold at Waco the November term, 1895, of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, December 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 21, A. D. 1895.

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 31, 1896, and duly entered of record in the minutes of this court at Waco, in volume 2, page 355, a true copy of same duly certified being attached hereto, marked "Exhibit B," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the April term, 1896, of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 27, 28, 29, 30, May 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16, A. D. 1896.

I further certify that in pursuance of an order of the Hon. A. P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated November 4, 1896, and duly entered of record in the minutes of this court at Waco in volume 2, page 383, a true copy of same duly certified being attached hereto, marked "Exhibit C," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the November term (1896) of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, and 30; December 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, and 19, A. D. 1896. (On November 16 and 17, 1896, Judge Swayne not being present, court was opened and closed by the United States marshal.)

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 27, 1897, and duly entered of record in the minutes of this court at Waco in volume 2, page 432, a true copy of same duly certified being attached hereto, marked "Exhibit D," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the April term (1897) of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 20, 21, 22, 23, 24, 26, 27, 28, 29, and 30; May 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15, A. D. 1897. (On April 12, 1897, by written order of Hon. Charles Swayne the court was adjourned by the United States marshal until April 20, 1897.)

I further certify that after a careful examination of the records of this court at Waco I find no record of any term of said court, or any portion of any term, special or otherwise, having been held by the said the Hon. Charles Swayne, United States district judge as aforesaid, between and including the years 1894 and 1903.

I further certify that upon the various dates above mentioned, upon which the respective terms of court were held at the Waco division by the Hon. Charles Swayne, the said Waco division was included in the northern judicial district of Texas, but by act of Congress same was on the 1st day of July, A. D. 1902, transferred to and made a part of the western district of Texas, and is now included in said last-named district.

In witness whereof I hereto affix my official signature and the seal of said district court at my office in the city of Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.] D. H. HART, *Clerk,*
By L. B. MCCULLOCH, *Deputy.*

EXHIBIT E.

In the United States circuit court of appeals for the fifth judicial circuit.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit, ss:

I, Charles H. Lednum, clerk of the circuit court of appeals of the United States for the fifth judicial circuit, do hereby certify that I have carefully examined the records and procedings of said court and find that on page 82, minute book 3, under date of June 8, 1897, appears the following order, viz:

"*Ordered,* That for the next term, commencing on the third Monday in November, 1897, the Hon. Charles Swayne, judge of the northern district of Florida, and the Hon. David E. Bryant, judge of the eastern district of Texas, be, and they are hereby, designated to sit as judges in this court whenever, by reason of the absence of the circuit justice, or either of the circuit judges, the presence of one or more district judges shall be necessary to constitute a full bench.

"Judge Swayne will be expected to attend regularly during the months of November, December, January, and February, and thereafter during the term as the business of the court may require, and Judge Bryant during the months of March, April, May, and June, and otherwise during the first part of the term as the business of the court may require."

And on page 347, minute book 3, under date of November 21, 1898, appears the following order, viz:

"*Ordered,* That the Hon. Charles Swayne, United States district judge for the northern district of Florida, be, and he is hereby, designated to sit as one of the judges of this court at the present term for two weeks, and until Circuit Judge McCormick shall be able to attend."

And that pursuant to and in compliance with said orders the Hon.

Charles Swayne, United States district judge for the northern district of Florida, attended and was present and sitting as a member of said court on the following days, viz:

January 3, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31; February 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28; March 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31; April 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; May 2, 3, 4, 5, 6, 7, 8, 10, 17, 24, 25, 26, 27, 28; November 21, 22, 23, 24, 25, 26, 28, 29, 30; December 1, 2, 3, 1898; January 30, 31; February 1, 2, 3, 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28; March 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 1899.

And I further certify that the orders above copied and set out are true, correct, complete, and full copies of the original orders of the said court, as the same appear enrolled and entered upon the minutes and proceedings of said court, on the pages and in the books, respectively, as stated, and which said records and books are now in my custody and possession by virtue of my official position.

Witness my official signature and the seal of the said circuit court of appeals of the United States for the fifth judicial circuit at the city of New Orleans, in the State of Louisiana, on this the 8th day of February, in the year of our Lord 1905, and of the Independence of the United States the one hundred and thirtieth.

[SEAL.] CHARLES H. LEDNUM,
Clerk of the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit.

EXHIBIT F.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Considering the certificate of D. W. Parish, esq., clerk of the United States district court for the eastern district of Texas, hereto attached, and it being my judgment that the public interests require the designation and appointment of the judge of another district in the fifth circuit in aid of the Hon. David Bryant, judge of the eastern district of Texas, with authority to hold the district and circuit courts in said district, and to discharge all judicial duties devolving upon a judge of the district:

Now, therefore, I, Don A. Pardee, circuit judge of the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, judge of the northern district of Florida, to have and exercise within the eastern district of Texas the same powers that are vested in the judge thereof and with the judge of the said district to hold separately at the same time district and circuit courts in said district and discharge all the judicial duties of the judge therein, and particularly to hold a special term of the district court for the eastern district of Texas, at Tyler, Tex., commencing June 18, 1900.

Witness my hand this 17th day of May, A. D. 1900.

DON A. PARDEE, *Circuit Judge.*

(Indorsements: Order of Judge Don A. Pardee designating Hon. Charles Swayne, etc. Filed May 19, 1900. D. W. Parish, clerk. Extract from minutes of the district court of the United States. For the eastern district of Texas, at Tyler, Tex. Vol. D, page 177.)

United States circuit court.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

It appearing from the certificate herewith filed, of the clerk of the United States district court for the eastern district of Texas, at Tyler, Tex., that from the accumulation and urgency of business pending in the district and circuit courts of the United States for the eastern district of Texas, at Tyler, Tex., the public interests require the designation and appointment of a judge to hold the special term of the United States district court for said eastern district, heretofore ordered to be convened and held on the 3d day of December, A. D. 1900.

Now, therefore, in consideration of sections 592–596, Revised Statutes, I, Don. A. Pardee, circuit judge, do hereby designate and appoint Hon. Charles Swayne, judge of the northern district of Florida, in said circuit, in aid of the judge of the eastern district of Texas, and to have and exercise within the said eastern district of Texas the same powers that are vested in the judge thereof, and particularly to hold the special term of the United States district court for said eastern district at Tyler, Tex., heretofore ordered to be convened and held on the 3d day of December, A. D. 1900.

Witness my hand this 12th day of November, A. D. 1900.

DON A. PARDEE, *Circuit Judge.*

(Indorsed:) Order designating and appointing Hon. Charles Swayne, judge of the United States district court for the northern district of Florida, to hold the special term of the United States district court for the eastern district of Texas, to convene at Tyler, Texas, on the 3rd day of December, A. D. 1900. Filed and entered of record November 14th, 1900. D. W. Parish, clerk. (Extract from the minutes of the district court of the United States for the eastern district of Texas, from Vol. D, page 217.)

United States circuit court.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

It appearing from the certificate herewith filed of the United States district court for the eastern district of Texas, at Tyler, Tex., that from the accumulation and urgency of business pending in the district and circuit courts of the United States for the eastern district of Texas, at Tyler, Tex., the public interests require the designation and appointment of a judge to hold the special term of the United States district court for the eastern district of Texas, at Tyler, Tex., heretofore ordered to be convened and held on the 13th day of January, A. D. 1902;

Now, therefore, in consideration of sections 592–596, Revised Statutes, I, Don A Pardee, circuit judge, do hereby designate and appoint Hon. Charles Swayne, judge of the northern district of Florida, in said circuit, in aid of the judge of the eastern district of Texas, and to have and exercise within the said eastern district of Texas the same powers that are vested in the judge thereof, and particularly to hold the special term of the United States district court for said eastern district, at Tyler, Tex., heretofore ordered to be convened and held on the 13th day of January, A. D. 1902.

Witness my hand this 18th day of December, A. D. 1901.

DON A. PARDEE, *Circuit Judge.*

(Indorsements:) Order designating Charles Swayne, judge of the United States district court for the northern district of Florida, to hold the special term of the United States district court for the eastern district of Texas, at Tyler, Tex., to convene January 13, 1902. Filed and recorded December 23, 1901. D. W. Parish, clerk.

(Extract from the minutes of the district court of the United States for the eastern district of Texas. From Vol. D, p. 300.)

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Considering the certificate of J. W. Butler, esq., clerk of the United States district court for the eastern district of Texas, hereto attached, and it being my judgment that the public interest require the designation and appointment of the judge of another district in the fifth circuit in aid of the Hon. David Bryant, judge of the eastern district of Texas, with authority to hold the district and circuit courts in said district and to discharge all judicial duties devolving upon a judge of the district:

Now, therefore, I, Don. A. Pardee, circuit judge of the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, judge of the northern district of Florida, to have and exercise within the eastern district of Texas the same powers that are vested in the judge thereof, and with the judge of the said district to hold separately at the same time district and circuit courts in said district and discharge all the judicial duties of the judge therein, and particularly to hold a special term of the district court for the eastern district of Texas at Tyler, Tex., commencing January 12, A. D. 1903.

Witness my hand this 15th day of December, A. D. 1902.

DON. A. PARDEE, *Circuit Judge.*

Filed and recorded December 17, 1902.

J. W. BUTLER, *Clerk.*

(Extract from the minutes of the district court of the United States for the eastern district of Texas. From Vol. D, p. 331.)

In the district court of the United States for the eastern district of Texas, at Tyler.

I, A. O. Brackett, clerk of the district court of the United States for the eastern district of Texas, at Tyler, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be true and correct copies of all of the orders designating Hon. Charles Swayne, judge of the northern district of Florida, to hold court at Tyler, in the eastern district of Texas, from 1895 to 1903, inclusive, as the same now appears on file and of record in my office.

To certify which, witness my hand and the seal of said court, at Tyler, in said district, this the 6th day of February, A. D. 1905.

[SEAL.] A. O. BRACKETT,
Clerk United States District Court, E. D. T.
By J. W. BUTLER, *Deputy.*

Statement of the days and dates upon which Hon. Charles Swayne, judge of the northern district of Florida, held district court in the eastern district of Texas, at Tyler, from 1895 to 1903, inclusive, viz, June 18, 19, 20, 21, 22, 23, 25, 26, 27, and 28, 1900, as is shown from the minutes of said court in Volume D, on pages from 183 to 196, inclusive.

December 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, and 29, 1900, as is shown from the minutes of said court. (In Vol. D, on pages from 222 to 260, inclusive.)

January 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, and February 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 16, 1903, as is shown from the minutes of said court. (In Vol. D, on pages from 338 to 376, inclusive.)

I, A. O. Brackett, clerk of the district court of the United States for the eastern district of Texas, at Tyler, in the fifth circuit and district aforesaid, do hereby certify that the above is a true and correct statement of the days and dates upon which Hon. Charles Swayne, judge of the northern district of Florida, held court at Tyler, Tex., as the same appears from the records in my office.

To certify which, witness my hand and the seal of said court, at Tyler, in said district, this the 6th day of February, A. D. 1905.

[SEAL.] A. O. BRACKETT,
Clerk United States District Court, Eastern District of Texas.
By J. W. BUTLER, *Deputy.*

EXHIBIT G.

District court of the United States, eastern district of Louisiana.

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of said court for the New Orleans division thereof show that the Hon. Charles Swayne, judge, presided at the sessions of said court held at the city of New Orleans, State of Louisiana, on the following days, viz: April 19, 20, 25, 26, 27, 29, 30, 1895; May 1, 2, 3, 4, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 1895.

I further certify that the minutes of said court for the Baton Rouge division thereof show that the Hon. Charles Swayne, judge, presided at the session of said court at the city of Baton Rouge, State of Louisiana, on the following days, viz: April 22, 23, 24, 1895.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.] FRANK HASTINGS MORTIMER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE,
United States Judge.

District court of the United States, eastern district of Louisiana.

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of said court for the New Orleans division thereof show that the Hon. Charles Swayne, judge, presided at the sessions of said court held at the city of New Orleans, State of Louisiana, on the following days, viz: May 24, 25, 26, 28, 29, 30, 31, 1900; June 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 1900.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.] FRANK HASTINGS MORTIMER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is

signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE,
United States Judge.

EXHIBIT H.

[From the minutes of the circuit court of the United States for the northern district of Texas, at Dallas.]

DALLAS, TEX., *January 13, 1896.*

Be it remembered that on this the 13th day of January, 1896, the same being the second Monday in said month, the circuit court of the United States in the fifth circuit and in and for the northern district of Texas, met at Dallas, Tex., pursuant to law.

Present: Hon. W. O. Hamilton, district attorney; R. M. Love, marshal, and J. H. Finks, clerk, by his deputy, Charles H. Lednum, when and where the following proceedings were had and done, to wit:

Upon the written order of the Hon. Charles Swayne, United States district judge for the northern district of Florida, designated and appointed to hold the court in this district, the marshal adjourned the court until Monday morning, January 20, 1896, at 10 o'clock.

MONDAY, *January 20, 1896.*

Court met pursuant to adjournment, same officers present as on preceding day, and also J. H. Finks, clerk, when and where the following proceedings were had and done, to wit:

Hon. Charles Swayne, United States district judge, failing to be present to preside over the court, the marshal thereupon adjourned court until Tuesday morning at 10 o'clock.

TUESDAY, *January 21, 1896.*

Court met pusuant to adjournment. Present: Hon. Charles Swayne, United States district judge, presiding; W. O. Hamilton, district attorney; R. M. Love, marshal, and J. H. Finks, clerk, and his deputy, Charles H. Lednum, when and where the following proceedings were had and done, to wit, Judge Swayne present on following days: January 22, 23, 24, 25, 27, 28, 29, 30, 31; February 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29; March 2, 3, 4, 5, 6, 1896.

May term, 1896: May 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; June 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27.

January term, 1897: January 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; February 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27.

May term, 1897: May 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31; June 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, July 1.

I, J. H. Finks, clerk of the United States district and circuit courts fifth circuit and northern district of Texas, do hereby certify that the records of the said courts at Dallas, Tex., show that the Hon. Charles Swayne, United States district judge for the northern district of Florida, held court at Dallas by designation on each of the preceding days as stated above and for the terms therein mentioned.

In testimony whereof, witness my hand and seal of said United States circuit court, at Dallas, Tex., this the 7th day of February, A. D. 1905.

[SEAL.] J. H. FINKS,
Clerk of the United States Circuit Court.

Certificate of H. J. Carter, clerk United States circuit court eastern district of Louisiana, as to days on which Judge Charles Swayne held the circuit court in New Orleans in May, 1898.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, on the 10th day of May, 1898, and entered on said date, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana in aid of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit: In the city of New Orleans, 1898, May 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 27.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.] H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court, that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge.*

Certificate of H. J. Carter, clerk United States circuit court, eastern district of Louisiana, as to days on which Judge Charles Swayne held the circuit court in New Orleans in March, 1899.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. A. P. McCormick, United States circuit judge for the fifth judicial circuit, on the 4th day of March, 1899, and entered on said date, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana in aid of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit: In the city of New Orleans March 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 1899.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.] H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge.*

Certificate of H. J. Carter, clerk United States circuit court, eastern district of Louisiana, as to days on which Hon. Charles Swayne, judge, held the circuit court in New Orleans in May and June, 1900.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, on the 12th day of May, 1900, and entered on said date, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana in aid of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit: In the city of New Orleans, May 24, 25, 26, 28, 29, 30, 31, June 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 1900.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.] H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge.*

Certificate of H. J. Carter, clerk of United States circuit court, eastern district of Louisiana, as to days on which Hon. Charles Swayne held the circuit court in Baton Rouge in April, 1895.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, entered on the 19th day of April, 1895, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana, pending the disability of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held a session of the United States circuit court for the eastern district of Louisiana, in the city of Baton Rouge, La., on the following days, to wit: April 22, 23, 24, 1895.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.] H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans in said district this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge.*

Certificate as to the days on which the district court for eastern district of Louisiana was held in May, 1898, by the Hon. Charles Swayne, judge.

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of said court, for the New Orleans division thereof, show that the Hon. Charles Swayne, judge, presided at the sessions of said court, held at the city of New Orleans, State of Louisiana, on the following days, viz: May 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 27, 28, 1898.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.] FRANK HASTINGS MORTIMER,
Clerk.

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE,
United States Judge.

Certificate of H. J. Carter, clerk United States circuit court eastern district of Louisiana, as to days on which Judge Charles Swayne held the circuit court in New Orleans in April and May, 1895.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that, in pursuance of an order made by the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, entered on the 19th day of April, 1895, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana pending the disability of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit, in the city of New Orleans: April 19, 20, 25, 26, 27, 29, 30; May 1, 2, 3, 4, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 1895.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of February, A. D. 1905.

[SEAL.] H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge.*

Certificate as to the days on which the United States district court for eastern district of Louisiana was held in March, 1899, by the Hon. Charles Swayne, judge.

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of said court for the New Orleans division thereof show that the Hon. Charles Swayne, judge, presided at the sessions of said court held at the city of New Orleans, State of Louisiana, on the following days, viz: March 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 1899.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.] FRANK HASTINGS MORTIMER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE,
United States Judge.

EXHIBIT I.

Certificate showing number of days court was opened in Pensacola and Tallahassee.

In the circuit court of the United States, northern district of Florida.
At Pensacola.

Hon. HENRY W. PALMER,
Chairman of Managers of House of Representatives
in Impeachment Proceedings of Judge Charles Swayne
in Senate of United States.

SIR: In compliance with your request, transmitted through Mr. B. S. Liddon, I have the honor to report that I have examined the records of said court, and find from the minute books thereof that Judge Swayne attended and held court in Pensacola and Tallahassee on the following dates, a record of which will appear on the pages set opposite to the dates so given.

1894.

(After the passage of act of July 23, 1894, when the district was changed.)

November 5, page 129, minute D.
November 7, page 132, minute D.
November 8, page 133, minute D.
November 9, page 137, minute D.
November 10, page 141, minute D.
November 12, page 144, minute D.
November 13, page 145, minute D.
November 14, page 146, minute D.
November 15, page 149, minute D.
November 16, page 153, minute D.
November 17, page 156, minute D.
November 19, page 160, minute D.
November 20, page 162, minute D.
November 21, page 163, minute D.
November 22, page 167, minute D.
November 23, page 176, minute D.
November 24, page 179, minute D.
November 26, page 187, minute D.
December 6, page 203, minute D.

1895.

February 6, page 207, minute D.
February 7, page 208, minute D.
March 4, page 209, minute D.
March 5, page 211, minute D.
March 6, page 213, minute D.
March 7, page 217, minute D.
March 8, page 220, minute D.
March 9, page 222, minute D.
March 11, page 223, minute D.
March 12, page 225, minute D.
March 13, page 232, minute D.
March 14, page 236, minute D.
March 15, page 240, minute D.
March 16, page 244, minute D.
March 18, page 250, minute D.
May 6, page 264, minute D.
May 7, page 267, minute D.
May 8, page 275, minute D.
May 9, page 280, minute D.
November 5, page 301, minute D.
November 6, page 304, minute D.
November 7, page 308, minute D.
November 8, page 312, minute D.
November 9, page 315, minute D.
November 11, page 324, minute D.
November 12, page 341, minute D.
November 13, page 350, minute D.
November 14, page 358, minute D.
November 15, page 364, minute D.
November 16, page 366, minute D.

1896.

January 18, page 452, minute D.
April 7, page 2, minute E.
April 8, page 17, minute E.
April 9, page 19, minute E.
April 10, page 22, minute E.
April 11, page 25, minute E.
April 13, page 32, minute E.
April 14, page 46, minute E.
April 15, page 57, minute E.
April 16, page 61, minute E.
April 17, page 64, minute E.
April 18, page 66, minute E.
April 20, page 73, minute E.
April 21, page 84, minute E.
April 22, page 91, minute E.
April 23, page 92, minute E.
April 24, page 97, minute E.
April 25, page 102, minute E.
June 29, page 141, minute E.
June 30, page 142, minute E.
July 1, page 142, minute E.
November 4, page 147, minute E.
November 5, page 152, minute E.
November 6, page 154, minute E.
November 7, page 167, minute E.
November 9, page 175, minute E.
November 10, page 186, minute E.
November 11, page 189, minute E.
November 12, page 197, minute E.
November 13, page 201, minute E.

1897.

January 9, page 208, minute E.
April 6, page 229, minute E.
April 7, page 233, minute E.
April 8, page 237, minute E.
April 9, page 244, minute E.
April 10, page 249, minute E.
April 11, page 252, minute E.
April 12, page 252, minute E.
April 13, page 255, minute E.
April 14, page 260, minute E.
April 15, page 264, minute E.
April 16, page 265, minute E.
July 2, page 272, minute E.
July 3, page 272, minute E.
December 14, page 276, minute E.
December 15, page 286, minute E.
December 16, page 298, minute E.
December 17, page 308, minute E.
December 18, page 317, minute E.
December 21, page 320, minute E.

1898.

May 28, page 350, minute E.
May 30, page 351, minute E.
May 31, page 351, minute E.
June 1, page 353, minute E.
June 2, page 356, minute E.
June 3, page 356, minute E.
June 4, page 357, minute E.
November 15, page 363, minute E.
November 16, page 365, minute E.
November 17, page 365, minute E.
November 18, page 366, minute E.
November 19, page 366, minute E.
December 7, page 368, minute E.
December 8, page 368, minute E.
December 9, page 368, minute E.
December 10, page 368, minute E.
December 12, page 369, minute E.
December 13, page 370, minute E.
December 14, page 371, minute E.
December 15, page 371, minute E.
December 16, page 372, minute E.
December 17, page 372, minute E.

1899.

January 27, page 373, minute E.
January 28, page 376, minute E.
March 20, page 379, minute E.
March 21, page 380, minute E.
March 22, page 380, minute E.
March 23, page 381, minute E.
March 24, page 381, minute E.
March 25, page 381, minute E.
May 1, page 383, minute E.
May 2, page 385, minute E.
May 3, page 387, minute E.
May 4, page 396, minute E.
May 5, page 397, minute E.
May 6, page 398, minute E.
May 15, page 400, minute E.
May 16, page 400, minute E.
May 17, page 400, minute E.
May 18, page 400, minute E.
May 19, page 400, minute E.
May 20, page 400, minute E.
October 5, page 7, minute F.
October 6, page 8, minute F.
November 6, page 10, minute F.
November 7, page 10, minute F.
November 8, page 11, minute F.
November 9, page 11, minute F.
November 10, page 11, minute F.
November 11, page 11, minute F.
November 13, page 11, minute F.
November 14, page 13, minute F.
November 15, page 13, minute F.
November 16, page 14, minute F.
November 17, page 15, minute F.
November 18, page 15, minute F.
November 27, page 16, minute F.
November 28, page 16, minute F.
November 29, page 17, minute F.
November 30, page 17, minute F.

December 1, page 17, minute F.
December 2, page 18, minute F.

1900.

January 23, page 20, minute F.
January 24, page 23, minute F.
January 25, page 24, minute F.
January 26, page 24, minute F.
May 8, page 29, minute F.
May 9, page 33, minute F.
May 10, page 33, minute F.
May 11, page 34, minute F.
May 12, page 35, minute F.
May 14, page 36, minute F.
May 15, page 36, minute F.
May 16, page 39, minute F.
May 17, page 42, minute F.
May 18, page 42, minute F.
May 19, page 43, minute F.
July 4, page 46, minute F.
November 8, page 49, minute F.
November 9, page 53, minute F.
November 10, page 53, minute F.
November 12, page 55, minute F.
November 13, page 55, minute F.
November 14, page 58, minute F.
November 15, page 59, minute F.
November 16, page 59, minute F.
November 17, page 60, minute F.
November 23, page 60, minute F.
November 24, page 60, minute F.
November 26, page 61, minute F.
November 27, page 61, minute F.
November 28, page 62, minute F.
November 30, page 62, minute F.
December 1, page 65, minute F.

1901.

January 2, page 67, minute F.
January 3, page 68, minute F.
January 4, page 68, minute F.
January 22, page 68, minute F.
January 23, page 68, minute F.
January 24, page 68, minute F.
January 25, page 69, minute F.
January 26, page 70, minute F.
January 30, page 70, minute F.
February 5, page 70, minute F.
February 7, page 70, minute F.
February 13, page 71, minute F.
February 14, page 71, minute F.
February 20, page 72, minute F.
February 27, page 72, minute F.
February 28, page 73, minute F.
March 1, page 73, minute F.
March 2, page 74, minute F.
March 4, page 75, minute F.
March 5, page 75, minute F.
March 6, page 76, minute F.
March 7, page 77, minute F.
March 8, page 77, minute F.
March 9, page 78, minute F.
March 11, page 78, minute F.
March 12, page 79, minute F.
March 13, page 79, minute F.
March 14, page 80, minute F.
March 18, page 80, minute F.
March 20, page 80, minute F.
March 25, page 81, minute F.
March 27, page 81, minute F.
March 30, page 81, minute F.
April 1, page 82, minute F.
April 2, page 82, minute F.
April 3, page 82, minute F.
April 4, page 82, minute F.
April 6, page 83, minute F.
April 26, page 85, minute F.
April 27, page 86, minute F.
April 29, page 86, minute F.
April 30, page 88, minute F.
May 1, page 90, minute F.
May 2, page 91, minute F.
May 3, page 92, minute F.
May 4, page 92, minute F.
May 5, page 93, minute F.
May 6, page 94, minute F.
May 7, page 96, minute F.
May 8, page 97, minute F.
May 9, page 98, minute F.
May 10, page 98, minute F.
May 11, page 100, minute F.
May 13, page 101, minute F.
May 15, page 101, minute F.
May 16, page 101, minute F.
May 17, page 101, minute F.
May 18, page 101, minute F.
May 22, page 102, minute F.
May 23, page 102, minute F.
May 24, page 102, minute F.
May 25, page 102, minute F.
May 27, page 102, minute F.
May 28, page 103, minute F.
May 29, page 103, minute F.
May 30, page 103, minute F.
May 31, page 103, minute F.
June 1, page 103, minute F.
June 3, page 104, minute F.
June 4, page 104, minute F.
June 5, page 104, minute F.
June 6, page 104, minute F.
June 7, page 104, minute F.
June 8, page 104, minute F.
June 10, page 104, minute F.
June 11, page 105, minute F.
June 12, page 105, minute F.
June 13, page 105, minute F.
June 14, page 105, minute F.
June 15, page 105, minute F.
June 17, page 105, minute F.
June 18, page 105, minute F.
June 19, page 107, minute F.
November 4, page 107, minute F.
November 5, page 107, minute F.
November 6, page 109, minute F.
November 7, page 109, minute F.
November 8, page 109, minute F.
November 9, page 109, minute F.
November 11, page 110, minute F.
November 12, page 111, minute F.
November 13, page 113, minute F.
November 14, page 113, minute F.
November 15, page 113, minute F.
November 16, page 113, minute F.
November 23, page 114, minute F.
November 24, page 114, minute F.
November 25, page 114, minute F.
November 26, page 114, minute F.
November 27, page 114, minute F.
November 29, page 114, minute F.
November 30, page 114, minute F.
December 3, page 115, minute F.
December 9, page 115, minute F.
December 10, page 115, minute F.
December 11, page 115, minute F.
December 12, page 116, minute F.
December 13, page 116, minute F.
December 14, page 116, minute F.
December 16, page 116, minute F.
December 17, page 116, minute F.
December 18, page 116, minute F.
December 19, page 116, minute F.
December 20, page 117, minute F.
December 21, page 117, minute F.
December 22, page 117, minute F.
December 24, page 117, minute F.
December 26, page 117, minute F.
December 27, page 117, minute F.
December 28, page 118, minute F.
December 30, page 118, minute F.
December 31, page 118, minute F.

1902.

January 1, page 118, minute F.
January 2, page 119, minute F.
January 3, page 119, minute F.
January 4, page 119, minute F.
January 6, page 119, minute F.
January 7, page 119, minute F.
January 8, page 119, minute F.
January 11, page 120, minute F.
January 13, page 120, minute F.
January 14, page 120, minute F.
January 15, page 120, minute F.
January 16, page 120, minute F.
January 17, page 120, minute F.
January 18, page 120, minute F.
January 20, page 120, minute F.
January 21, page 121, minute F.
January 22, page 121, minute F.
January 23, page 121, minute F.
January 24, page 121, minute F.
January 25, page 121, minute F.
January 27, page 121, minute F.
January 28, page 121, minute F.
January 29, page 121, minute F.
January 30, page 122, minute F.
January 31, page 122, minute F.
February 1, page 122, minute F.
February 3, page 122, minute F.
February 5, page 123, minute F.
February 6, page 123, minute F.
February 7, page 123, minute F.
February 8, page 123, minute F.
February 10, page 123, minute F.
February 11, page 123, minute F.
February 12, page 123, minute F.
February 13, page 123, minute F.
February 14, page 124, minute F.
February 15, page 124, minute F.
February 17, page 124, minute F.
February 18, page 125, minute F.
February 19, page 126, minute F.
February 20, page 126, minute F.
February 21, page 126, minute F.
February 22, page 126, minute F.
February 24, page 126, minute F.
February 25, page 126, minute F.
February 26, page 126, minute F.
February 27, page 126, minute F.
February 28, page 127, minute F.
March 1, page 127, minute F.
March 3, page 127, minute F.
March 4, page 127, minute F.
March 5, page 127, minute F.
March 6, page 127, minute F.
March 7, page 127, minute F.
March 8, page 127, minute F.
March 10, page 128, minute F.
March 11, page 128, minute F.
March 12, page 131, minute F.
March 13, page 131, minute F.
March 14, page 131, minute F.
March 15, page 132, minute F.
March 17, page 132, minute F.
March 18, page 133, minute F.
March 19, page 133, minute F.

March 20, page 134, minute F.
March 21, page 134, minute F.
March 22, page 134, minute F.
March 31, page 135, minute F.
April 1, page 135, minute F.
April 2, page 135, minute F.
June 16, page 136, minute F.
June 17, page 139, minute F.
June 18, page 139, minute F.
November 7, page 147, minute F.
November 8, page 147, minute F.
November 10, page 147, minute F.
November 11, page 147, minute F.
November 12, page 151, minute F.
November 13, page 151, minute F.
November 14, page 152, minute F.
November 15, page 152, minute F.
November 17, page 152, minute F.
November 18, page 152, minute F.
November 19, page 153, minute F.
November 20, page 153, minute F.
November 21, page 155, minute F.
November 22, page 155, minute F.
November 24, page 155, minute F.
November 25, page 156, minute F.
November 26, page 156, minute F.
November 27, page 157, minute F.
November 28, page 157, minute F.
November 29, page 158, minute F.
December 1, page 159, minute F.
December 2, page 161, minute F.
December 3, page 161, minute F.
December 4, page 161, minute F.
December 5, page 161, minute F.
December 6, page 161 minute F.
December 8, page 161, minute F.
December 9, page 161, minute F.
December 10, page 161, minute F.
December 11 page 162, minute F.
December 12, page 162, minute F.
December 13, page 162, minute F.
December 15, page 162, minute F.
December 16, page 162, minute F.

1903.

March 2, page 174, minute F.
March 3, page 177, minute F.
March 5, page 177, minute F.
March 6, page 177, minute F.
March 7, page 178, minute F.
March 9, page 178, minute F.
March 10, page 178, minute F.
March 11, page 178, minute F.
March 12, page 178, minute F.
March 13, page 178, minute F.
March 14, page 178, minute F.
April 15, page 181, minute F.
April 16, page 183, minute F.
April 17, page 183, minute F.
April 18, page 183, minute F.
April 20, page 183, minute F.
April 21, page 183, minute F.
April 22, page 184, minute F.
April 23, page 184, minute F.
April 24, page 184, minute F.
April 25, page 184, minute F.
April 27, page 184, minute F.
April 28, page 184, minute F.
April 29, page 184, minute F.
April 30, page 186, minute F.
May 1, page 187, minute F.
May 2, page 187, minute F.
May 4, page 187, minute F.
May 5, page 189, minute F.
May 6, page 189, minute F.
May 7, page 190, minute F.
May 8, page 190, minute F.
May 9, page 190, minute F.
May 11, page 190, minute F.
May 12, page 191, minute F.
May 13, page 191, minute F.
May 14, page 191, minute F.
May 15, page 192, minute F.
May 16, page 192, minute F.
May 25, page 192, minute F.
May 26, page 192, minute F.
May 27, page 192, minute F.
May 28, page 193, minute F.
May 29, page 193, minute F.
May 30, page 193, minute F.
June 1, page 193, minute F.
October 2, page 200, minute F.
October 3, page 200, minute F.
October 5, page 200, minute F.
October 6, page 200, minute F.
October 7, page 200, minute F.
October 8, page 201, minute F.
October 9, page 201, minute F.
October 10, page 201, minute F.
October 12, page 201, minute F.
October 13, page 202, minute F.
October 16, page 203, minute F.
October 19, page 204, minute F.
October 20, page 204, minute F.
October 21, page 204, minute F.
October 22, page 204, minute F.
October 23, page 205, minute F.
October 24, page 205, minute F.
October 26, page 205, minute F.
October 27, page 207, minute F.
October 28, page 208, minute F.
October 29, page 208, minute F.
October 30, page 208, minute F.
October 31, page 208, minute F.
November 2, page 209, minute F.
November 3, page 209, minute F.
November 4, page 211, minute F.
November 5, page 212, minute F.
November 6, page 212, minute F.
November 7, page 213, minute F.
November 9, page 213, minute F.
November 10, page 216, minute F.
November 11, page 217, minute F.
November 12, page 217, minute F.
November 13, page 217, minute F.
November 14, page 218, minute F.
November 16, page 218, minute F.
November 17, page 218, minute F.
November 18, page 218, minute F.
November 19, page 218, minute F.
November 20, page 218, minute F.
November 21, page 218, minute F.
November 30, page 218, minute F.
December 1, page 219, minute F.
December 2, page 219, minute F.
December 3, page 219, minute F.
December 4, page 219, minute F.
December 5, page 219, minute F.
December 7, page 219, minute F.
December 8, page 219, minute F.
December 9, page 220, minute F.
December 10, page 220, minute F.
December 11, page 220, minute F.
December 12, page 220, minute F.
December 14, page 221, minute F.
December 15, page 221, minute F.
December 16, page 221, minute F.
December 17, page 221, minute F.
December 18, page 221, minute F.
December 19, page 221, minute F.
December 21, page 221, minute F.
December 22, page 221, minute F.
December 23, page 222, minute F.
December 24, page 222, minute F.
December 26, page 222, minute F.
December 28, page 222, minute F.
December 29, page 222, minute F.
December 31, page 222, minute F.

AT TALLAHASSEE.

1894.

December 4, page 191, old minute book.

1895.

January 18, page 202, old minute book.
January 19, page 209, old minute book.
February 4, page 209, old minute book.
February 5, page 220, old minute book.
April 16, page 223, old minute book.
April 17, page 223, old minute book.
April 18, page 226, old minute book.
July 16, page 233, old minute book.

1896.

The May term of 1896 was held by Judge Locke.

1896.

November 2, page 60, minute book.

1897.

January 9, page 60, minute book.

1898.

June 6, page 78, minute book.
June 7, page 82, minute book.
June 8, page 91, minute book.

1899.

May 9, page 105, minute book.
May 10, page 107, minute book.
May 11, page 109, minute book.
May 12, page 109, minute book.
May 13, page 110, minute book.
November 20, page 110, minute book.
November 21, page 110, minute book.
November 22, page 113, minute book.
November 23, page 116, minute book.
November 24, page 117, minute book.
December 4, page 117, minute book.
December 5, page 119, minute book.

1900.

May 22, page 124, minute book.
May 23, page 126, minute book.
November 19, page 128, minute book.
November 20, page 129, minute book.
November 21, page 130, minute book.
November 22, page 132, minute book.

1901.

November 18, page 134, minute book.
November 19, page 135, minute book.
November 20, page 136, minute book.
November 21, page 137, minute book.
November 22, page 138, minute book.

1902.

March 24, page 141, minute book.
March 25, page 142, minute book.
March 26, page 143, minute book.
March 27, page 144, minute book.

1903.

May 18, page 155, minute book.
May 19, page 156, minute book.
May 20, page 156, minute book.
May 21, page 157, minute book.
May 22, page 157, minute book.
May 23, page 158, minute book.
November 23, page 169, minute book.
November 24, page 169, minute book.
November 25, page 171, minute book.

November 26, page 171, minute book.
November 27, page 172, minute book.
November 28, page 172, minute book.

STATE OF FLORIDA, *County of Escambia, ss:*

I, Frederick W. Marsh, clerk of the circuit court of the United States in and for the northern district of Florida and the fifth judicial circuit, hereby certify that the foregoing is a true and correct copy of certain dates in which court was held, the judge present and presiding, at Pensacola and Tallahassee, Fla., for the different years as set forth, with the page upon which the entry is to be found, together with the number of the minute book wherein the same is of record.

In witness whereof I have hereunto set my hand and the seal of said court, at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.] F. W. MARSH, *Clerk.*

District court of the United States, northern district of Florida.

Dates on which the district court was opened and the judge present and presiding, in addition to those already given for the circuit court, on which dates the judge was present and presiding in both courts:

1894.

December 5, page 52, old minute book.

1895.

October 15, page 78, old minute book.
October 16, page 84, old minute book.
October 17, page 89, old minute book.

1896.

January 17, page 105, old minute book.

1898.

January 14, page 67, new minute book.
January 15, page 70, new minute book.
April 5, page 76, new minute book.
November 12, page 110, new minute book.
November 14, page 119, new minute book.

1899.

November 25, page 198, new minute book.

1900.

May 4, page 226, new minute book.
May 5, page 227, new minute book.
May 7, page 236, new minute book.
July 4, page 250, new minute book.
October 3, page 263, new minute book.

1901.

February 25, page 301, new minute book.
March 22, page 308, new minute book.
May 14, page 330, new minute book.
May 20, page 332, new minute book.
May 21, page 332, new minute book.
June 20, page 339, new minute book.
June 21, page 339, new minute book.
June 22, page 339, new minute book.
June 24, page 340, new minute book.
June 25, page 340, new minute book.
June 26, page 341, new minute book.
June 27, page 341, new minute book.
June 28, page 341, new minute book.
June 29, page 342, new minute book.
December 2, page 366, new minute book.

1902.

February 4, page 390, new minute book.
March 28, page 409, new minute book.
March 29, page 409, new minute book.
November 6, page 435, new minute book.

1903.

September 30, page 529, new minute book.
October 17, page 546, new minute book.
December 30, page 568, new minute book.

UNITED STATES OF AMERICA,
Northern District of Florida.

I, F. W. Marsh, clerk of the district court of the United States in and for the northern district of Florida, hereby certify that the foregoing is a true and correct copy from the records of this court as the same remains of file and record in said court.

In testimony whereof I have hereunto set my hand and the seal of the said court at the city of Pensacola, in said district, this —— day of February, A. D. 1905.

[SEAL.] ——— ———, *Clerk.*

[From the minutes of the United States circuit court for the northern district of Texas, at Dallas. Vol. 7, page 153.]

DALLAS, TEX., *January 11, 1897.*

Be it remembered that on this the 11th day of February, 1897, the same being the second Monday of said month, the circuit court of the United States in the fifth circuit thereof, in and for the northern district of Texas, met at Dallas, Tex., pursuant to law.

Present, Hon. Charles Swayne, United States district judge for the northern district of Florida, presiding by regular designation and appointment; W. O. Hamilton, United States attorney; R. M. Love, marshal, and J. H. Finks, clerk, by his deputy, Charles H. Lednum, when and where the following proceedings were had and done, to wit:

I, J. H. Finks, clerk of the United States circuit court, fifth circuit and northern district of Texas, do hereby certify that the records of the said court at Dallas, Tex., show the foregoing order opening court on January 11, 1897.

In testimony whereof witness my hand officially and the seal of the United States circuit court at Dallas, Tex., this the 7th day of February, A. D. 1905.

[SEAL.] J. H. FINKS,
Clerk United States Circuit Court.

Mr. THURSTON. For the convenience of the court and notification to the managers as to what we claim these certificates show, I will ask to have printed in the RECORD a list compiled by us from the certificates showing the various dates in a brief and concise form in the nature of a calendar, and also showing our computations of the number of days covered by them.

Mr. Manager PALMER. To that we object.

Mr. THURSTON. I offer that not as evidence, but as part of our argument, and under the rule adopted this morning.

Mr. Manager PALMER. Mr. President, I submit that the certificates when printed will show what they contain, and their computation is what we object to.

The PRESIDING OFFICER. That is a part of the argument, and the Presiding Officer thinks should be withheld until the argument is commenced.

Mr. THURSTON. If that is their objection, we withhold it.

Mr. President, I ask to have printed in the RECORD the act of Congress approved July 23, 1894, and found at page 117 of volume 28, United States Statutes at Large, being the act which changed the boundary of the northern district of Florida.

The PRESIDING OFFICER. Does the counsel desire to have it read by the Secretary?

Mr. THURSTON. I do not desire to have it read.

The PRESIDING OFFICER. It will be placed in the RECORD without reading.

The act referred to is as follows:

CHAP. 149.—*An act to change the boundaries of the judicial districts of the State of Florida.*

Be it enacted, etc., That the following counties of the State of Florida, to wit: Alachua, Baker, Bradford, Brevard, Clay, Columbia, Dade, Duval, Hamilton, Lake, Madison, Marion, Nassau, Orange, Osceola, Putnam, St. John, Sumter, Suwannee, and Volusia, be, and the same are hereby, detached from the northern judicial district of said State, and attached to the southern judicial district thereof.

SEC. 2. That terms of the district and circuit courts for said southern district shall be held at Jacksonville, Fla., beginning on the first Monday of December of each year, in addition to the times at Key West and Tampa, as now provided by law.

SEC. 3. *And be it further enacted*, That all cases or proceedings pending in the circuit court for the northern district of Florida at Jacksonville, Fla., or filed in the office of the clerk of said circuit court at Jacksonville aforesaid, and all records of said court at Jacksonville aforesaid, are hereby transferred to said circuit court for the southern district of Florida, to be proceeded with therein as if originally instituted in said court. And all cases or proceedings pending in the district court for the northern district of Florida at Jacksonville, Fla., or filed in the office of the clerk of said district court at Jacksonville aforesaid, and all records of said court at Jacksonville aforesaid, are hereby transferred to said district court for the southern district of Florida, to be proceeded with therein as if originally instituted in said court.

Approved, July 23, 1894.

Mr. THURSTON. I also ask to have printed in the RECORD the various provisions from the statutes enacted by Congress providing for the compensation of circuit and district judges while attending court outside of their own districts. I have prepared this from the various appropriation acts of Congress, and I ask that it be printed in the RECORD.

Mr. Manager OLMSTED. Let us see what it is. [The paper was handed to Mr. Manager OLMSTED.]

Mr. THURSTON. I have prepared those relating to the district judges in the inverse order of their enactment, and I ask that they go into the RECORD in that order—that is, commencing with the last appropriation act and running backwards.

Mr. Manager OLMSTED. I presume they are all right.

The PRESIDING OFFICER. If there is no objection, the paper referred to by counsel for the respondent will be placed in the RECORD.

The paper referred to is as follows:

[Circuit court of appeals, act of March 3, 1891 (26 Stats., 828).]

SEC. 8. That any justice or judge who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides, shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed $10 per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

[Sundry civil appropriation bill, April 28, 1904 (Stats., p. 508).]

Appropriation of $165,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals, not to exceed $10 per day."

[Sundry civil appropriation bill, March 3, 1903 (Stats., p. 1141).]

Appropriation of $160,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals not to exceed $10 per day."

[Sundry civil appropriation bill, June 28, 1902 (Stats., p. 476).]

Appropriation of $160,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals not to exceed $10 per day."

[Sundry civil appropriation bill, March 3, 1901 (Stats., p. 1183).]

Appropriation of $160,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Deficiency appropriation bill, March 3, 1901 (Stats., p. 1047).]

Appropriation of $12,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, June 6, 1900 (Stats., p. 641).]

Appropriation of $150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, March 3, 1899 (Stats., p. 1116).]

Appropriation of $150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, July 1, 1898 (Stats., p. 644).]

Appropriation of $150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, June 4, 1897 (Stats., p. 58).]

Appropriation of $150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, June 11, 1896 (Stat. L., p. 451).]

Appropriation of $110,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States, expenses of judges of the circuit courts of appeals."

[Deficiency appropriation bill, June 8, 1896 (Stat. L., p. 398).]

Appropriation of $10,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, March 2, 1895 (Stat. L., p. 958).]

Appropriation of $150,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, August 18, 1894 (Stats., p. 417).]

Appropriation of $150,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts, and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, March 3, 1893 (Stats., p. 609).]

Appropriation of $150,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts, and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, August 5, 1892 (Stats., p. 386).]

Appropriation of $135,600, among other things, for payment "of expenses of district judges directed to hold court outside of their districts."

Mr. THURSTON. I also ask to have incorporated and printed in the RECORD certain short provisions of the act of July 31, 1894, being those provisions of the act relating to the duties of the Comptroller and other accounting officers of the Government in passing upon accounts such as are involved in this proceeding.

The PRESIDING OFFICER. Is there objection on the part of the managers?

Mr. Manager OLMSTED. This does not seem to be the statute, but somebody's digest.

Mr. HIGGINS. That is only a memorandum of the sections.

Mr. Manager OLMSTED. I would rather have the language of the act go in.

Mr. HIGGINS. Of course.

Mr. THURSTON. I thought it had been copied.

Mr. HIGGINS. No; it has not.

Mr. THURSTON. I offer the first line of section 7, which reads as follows.

The PRESIDING OFFICER. What is the volume?

Mr. THURSTON. Volume 28 of the Statutes at Large, page 206. It reads:

Accounts shall be examined by the auditors as follows:

Then I offer——

Mr. Manager SMITH. Is that all you offer?

Mr. THURSTON. No. Then I ask to have printed, following that, the fifth paragraph of section 7.

Mr. Manager OLMSTED. Pardon me if I look over it with you.

Mr. THURSTON. Certainly. Following that, I wish to offer the fifth paragraph of section 7, found on page 207; following that, the first paragraph of section 8, found upon the same page; then that clause of section 8 found on page 208, beginning with the words "all decisions by auditors," etc.; also section 13 of said act, on page 210.

The matter referred to is as follows:

Fifth. The Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the offices of the Secretary of State, the Attorney-General, and the Secretary of Agriculture, and of all bureaus and offices under their direction; all accounts relating to all other business within the jurisdiction of the Departments of State, Justice, and Agriculture; all accounts relating to the diplomatic and consular service, the judiciary, United States courts, judgments of United States courts, Executive office, Civil Service Commission, Interstate Commerce Commission, Department of Labor, District of Columbia, Fish Commission, Court of Claims and its judgments, Smithsonian Institution, Territorial governments, the Senate, the House of Representatives, the Public Printer, Library of Congress, Botanic Garden, and accounts of all boards, commissions, and establishments of the Government not within the jurisdiction of any of the Executive Departments. He shall certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate, according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives, Sergeant-at-Arms of the House of Representatives, or the chief officer of the Executive Department, commission, board, or establishment concerned.

* * * * * * *

SEC. 8. The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the executive branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account.

* * * * * * *

All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.

* * * * * * *

SEC. 13. Before transmission to the Department of the Treasury the accounts of district attorneys, assistant attorneys, marshals, commissioners, clerks, and other officers of the courts of the United States, except consular courts, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the United States, and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney-General and examined under his supervision.

Judges receiving salaries from the Treasury of the United States shall be paid monthly by the disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent. Interstate Commerce Commissioners and other officers, now paid as judges are, shall be paid monthly by the proper disbursing officer or officers.

Mr. THURSTON. I also ask to have incorporated and put into the RECORD the first paragraph of section 1 of the act of February 22, 1875, entitled "An act regulating fees and costs, and for other purposes."

The PRESIDING OFFICER. What volume?

Mr. HIGGINS. The first volume of the Supplement to the Revised Statutes of the United States.

The PRESIDING OFFICER. In the absence of objection, the matter referred to will be inserted in the RECORD.

The matter referred to is as follows:

[SECTION 1.] That before any bill of costs shall be taxed by any judge or other officer, or any account payable out of the money of the United States shall be allowed by any officer of the Treasury, in favor of clerks, marshals, or district attorneys, the party claiming such account shall render the same, with the vouchers and items thereof, to a United States circuit or district court, and, in presence of the district attorney or his sworn assistant, whose presence shall be noted on the record, prove in open court, to the satisfaction of the court, by his own oath or that of other persons having knowledge of the facts, to be attached to such account, that the services therein charged have been actually and necessarily performed as therein stated; and that the disbursements charged have been fully paid in lawful money; and the court shall thereupon cause to be entered of record an order approving or disapproving the account, as may be according to law, and just.

Mr. THURSTON. I also ask to have incorporated in the RECORD those portions of the official debates of Congress, first, found in volume 28, part 5, Fifty-fourth Congress, first session, being a part of the proceedings of the Senate of April 24, 1896; second, the proceedings of the House of Representa-

tives found in the CONGRESSIONAL RECORD, volume 31, part 3, Fifty-fifth Congress, first session, being a part of the proceedings of that House of February 28, 1898; third, that part of the proceedings of the House of Representatives found in the CONGRESSIONAL RECORD, Fifty-seventh Congress, second session, volume 36, part 2, being a part of the proceedings of the House of Representatives of January 27, 1903.

These are the debates on three separate occasions when the provisions of law relating to the payment of expenses for travel and attendance of judges holding court outside of their districts were under consideration. We offer it as a part of the parliamentary history of the enactment of these laws and as having some bearing upon their construction.

The PRESIDING OFFICER. Is there any objection to that?

Mr. Manager OLMSTED. Is the honorable counsel through with his offer?

Mr. THURSTON. Yes, sir.

Mr. HIGGINS. As to that part of it; but we have another statute here to which you will not object.

Mr. Manager OLMSTED. You desire to put it in ahead of this, do you?

Mr. HIGGINS. Yes.

Mr. THURSTON. In advance of the offer—which I desire and withhold for the moment—I ask to have incorporated and printed in the RECORD certain portions of the United States Statutes, volume 30, page 544, which I now present, being a part of the act to establish a uniform system of bankruptcy, etc.

Mr. HIGGINS. It is the Greenhut case.

Mr. THURSTON. It is the O'Neal case. The question raised in that case was whether or not the officer at that time was an officer in the discharge of his duty.

Mr. Manager PALMER. We shall not object.

The PRESIDING OFFICER. Is there objection?

Mr. Manager PALMER. No, sir.

The PRESIDING OFFICER. The matter referred to will be inserted in the RECORD.

The matter referred to is as follows:

[United States Statutes, vol. 30, p. 544. July 1, 1898.]

CHAP. 541.—*An act to establish a uniform system of bankruptcy throughout the United States.*

CHAPTER I.—DEFINITIONS.

SECTION 1. *Meaning of words and phrases.*—* * * "Officer" shall include, clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer. * * *

[Chapter II, pp. 545–546.]

SEC. 2. *Creation of courts of bankruptcy and their jurisdictions.*—* * * (4) Arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; * * * (7) cause the estates of bankrupts to be collected, reduced to money and distributed; * * * (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; * * *.

[Chapter 541, page 556.]

SEC. 41. *Contempts before referee.*—A person shall not in proceedings before a referee (1) disobey or resist any lawful order, process, or writ, (2) misbehave during a hearing or so near the place thereof as to obstruct the same, (3) neglect to produce, after having been ordered to do so, any person or document, or (4) refuse to appear after having been subpœnaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to the law. * * * The referee shall certify the facts to the judge if any person shall do any of the things forbidden in this section. The judge shall thereupon, in summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to process of, or in the presence of, the court.

[Page 557.]

SEC. 47. *Duties of trustees.*—Trustees shall * * * (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest.

Mr. Manager OLMSTED. Mr. President, the honorable counsel for the respondent offers certain extracts from the CONGRESSIONAL RECORD purporting to contain some portions of the debates at various times upon provisions of pending bills, which subsequently became statutes, relating to the payment of expenses of district judges for the purpose, as he states, of construing those acts of Congress. To that we object, first, that it is not competent nor proper in the construction of a statute to consider the debates in Congress; and, second, that if admitted, it would require us in rebuttal to produce all the other portions of the debates, and then to call all those Members of Congress who are not present to ascertain their views upon the construction of the statute for which they then voted. Upon that I will take a very few minutes to refer the Presiding Officer and the Senate to what seems to me to be an entirely conclusive authority upon the subject.

It was decided in the United States *v.* Freight Association (166 U. S., p. 260), as stated in the syllabus:

Debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body.

Mr. Justice Peckham delivered the opinion of the court. On page 318 he said:

Looking simply at the history of the bill from the time it was introduced in the Senate until it was finally passed, it would be impossible to say what were the views of a majority of the members of each House in relation to the meaning of the act. It can not be said that a majority of both Houses did not agree with Senator Hoar in his views as to the construction to be given to the act as it passed the Senate. All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein.

There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. (United States *v.* Union Pacific R. R. Co., 91 U. S., 72; Aldridge *v.* Williams, 3 How., 9, Taney, Chief Justice; Mitchell *v.* Great Works Milling and Manufacturing Co., 2 Story, 648; Queen *v.* Hertford College, 3 Q. B. D., 693.)

The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other, the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it passed.

Mr. HIGGINS. What volume is that?

Mr. Manager OLMSTED. Judge Peckham's opinion is in 166 U. S., page 290.

Mr. HIGGINS. What is the name of the case?

Mr. Manager OLMSTED. The United States *v.* Freight Association.

Now, Mr. President, you will readily see from the few disjointed remarks in the body at the other end of the building, the bill coming before it for the first time, one Member taking an offhand view of a paragraph and saying so and so, and another saying something else, and the great body who vote for it saying nothing, it is improper—and the Supreme Court has so held, and so have the courts of England—that it is absolutely improper to look into the debates for the purpose of construing an act of assembly. You will see at once that in order to do full justice to the subject it would be necessary to call all those Members who did not vote and ascertain their views; which would amount to taking a new vote in the House of Representatives to determine upon the construction of an act of assembly, the construction of which is proper matter for the courts, and in this instance for the Senate sitting as a court.

Mr. THURSTON. Mr. President, I do not rise for the purpose of discussing the law myself, but in order to advise the court that I am offering here, not merely debates in Congress of what was said, but actions that were taken in connection with these statutes, amendments that were offered and rejected. I am offering the proceedings. They directly bear upon the construction of this act, and I have a right to refer to the CONGRESSIONAL RECORD in the debates, at least; for instance, Mr. Allen, in the Senate, when this provision was under consideration, offered the following——

Mr. Manager OLMSTED. I object to the gentleman putting in an argument the evidence to which we object. I understand he was about to read from the debates.

Mr. THURSTON. I am, certainly.

Mr. Manager OLMSTED. Well, I would ask that the honorable counsel wait until the question of the admissibility of the evidence has been determined.

Mr. THURSTON. Certainly, if you deny that in an argument I have a right to read from the proceedings of Congress. I should like to have that determined before I make any argument.

Mr. Manager OLMSTED. With the permission of the honorable counsel, I do insist that it is not proper in arguing a case, not only before a court, but before a jury, to put in evidence in that way, and put in the record the very matter the admissibility of which is now before the court. That is precisely what counsel objected to when Mr. Manager PALMER offered to prove an admission that the respondent had made before the committee of the House. They were on their feet before the paper got halfway to the clerk's desk, and contended that it was a monstrous outrage even to suggest its reading to

the Senate until the objection had been disposed of; and I do not know of any reason why the same rule which they invoked successfully should not be applied to them.

The PRESIDING OFFICER. The Presiding Officer thinks that counsel can make the argument that he desires to make without reading the Congressional debates. He desires to show the nature of the evidence which he proposes to introduce by introducing these debates. They are something more than debates. They are action upon amendments and various motions that were made. The Presiding Officer thinks that that can be done without any actual reading of the debates. There can be statements by counsel as to the particular matter to which he wishes to call the attention of the Senate without reading the debates.

Mr. THURSTON. Mr. President, in the line of the suggestion you have made I will in a very few words state what we offer to prove.

We offer to prove that on April 24, 1896, when this provision was before the Senate of the United States, the meaning of the clause was discussed on the floor of the Senate, and growing out of that discussion, and for the avowed purpose of making its meaning explicit, an amendment was attached to the clause in the Senate declaring, in substance, that nothing but actual expenses or moneys actually expended should be allowed the judges. That amendment was put on in the Senate. It went to conference and was rejected by the conference report, thereby, as we claim, determining that it was not the sense of the Congress of the United States that this allowance should be of moneys actually expended by the judges.

We further claim that in the proceedings of the House of Representatives, while a similar provision was under consideration on January 27, 1903, an amendment was offered, the purport of which was to prohibit the allowance to these judges of any traveling expenses where they had not actually made the expenditure of money; in other words, to prohibit them from certifying under the law to their traveling expenses when they had been riding free; and that amendment, made for that specific purpose, was rejected by the House, thereby showing, as we contend, the clear intention of Congress to allow the judges to certify and receive necessary or reasonable traveling expenses whether they paid the money out or not.

We further propose to show that in the House of Representatives on January 27, 1903, while a similar provision was under consideration——

Mr. Manager OLMSTED. What year?

Mr. THURSTON. 1903. That the House of Representatives on the date I have last named, in further consideration of this appropriation, took proceedings whereby an amendment was offered to prevent the judges of the courts of the United States from receiving free railroad transportation, which amendment by the House of Representatives was rejected, thereby attesting, as we believe, the opinion or construction of the House of Representatives that the provision of the law permitted judges to receive from the Treasury of the United States reasonable traveling expenses whether they paid their fare or rode free.

My associate desires to reply to the law that has just been presented.

Mr. HIGGINS. Mr. President, in the first place, there are two classes of legislative proceedings incorporated in this offer, as I understand. The one referred to by my colleague in the beginning of his remarks on this offer is where we offered to show the parliamentary history of the clause in the act of June 11, 1896, which is an offer to show an amendment proposed by a Senator, and the adoption thereof in the Senate, and afterwards a conference report, in which the amendment adopted by the Senate was stricken out and a substitute for the same enacted; and in that shape the act of 1896 became a law.

Now, quite apart from the question of the admissibility of debates as to the construction of a statute, is the principle that applies on this offer, for I find it laid down by the Supreme Court in the case of the United States *v.* Johnson (124 U. S., 237–253), which supports this proposition:

> In like manner cogent and persuasive is the construction placed by either or both of the two Houses of Congress by legislation and in debate upon the statute.

The syllabus of that case is as follows:

> The joint resolution of Congress of March 31, 1868 (5 Stat., 251), affords evidence that the practice of the Secretary of the Treasury prior to that date not to cover into the Treasury the sums received from the sale of captured and abandoned property, but to retain them in the hands of the Treasurer in order to pay them out from time to time on the order of the Secretary, was known to Congress and was acquiesced in by it, as to what had been previously done; and all this brings the practice within the well-settled rule that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous.

In other words, Mr. President, those legislative proceedings will make plain that the construction by a Senator upon the act of Congress under which district and circuit judges are paid when absent from their homes in the one case or their districts in the other holding court—that the construction which the learned managers place upon that act was the one which was sought by a Senator in that debate to place upon that statute in express words, and the Senate passed the amendment, and the conference committee struck it out. The Senate amendment, which was virtually a proviso that no expenses should be certified other than those that were actually incurred, was stricken out, and in place of it the last section of the act of 1891, creating the circuit court of appeals, was substituted for it, which said that when these sums were paid to the judge by the marshal they should be allowed to the marshal in his accounts. That clearly comes within the case of the United States *v.* Johnson and of the acquiescence by Congress. It is a much stronger case; it is more than an acquiescence by Congress in the construction, for it is by legislation making the statute in terms to be what excludes the construction that was sought to be put on it by a specific amendment to that effect.

That is a different thing from the mere opinions that are expressed by members of either House of Congress at the time when a bill is in consideration before it; it is a part of the legislative history of the act, the amendment adopted by the Senate and its being striken out in conference, and another feature added to the law in substitution for it being a part of our offer in what we seek to prove.

Now, Mr. President, I submit to the Senate that the principle which has been adduced in the case of the United States *v.* Freight Association (166 U. S.) is not applicable to the case that is now before the Senate. It is not simply and merely a question as to what is the construction that would be put upon the act in question by a court; it is not a question as to the construction that will be put upon it by any member of this tribunal. The question, we respectfully submit, is whether or no this statute admits of a doubtful construction and is open to more than one opinion. If a statute is ambiguous, if it has been loosely drawn, if it is not clearly and without any uncertainty of one construction, and therefore not open to construction, then we have authority as old as Judge Story, and coming from authority as high as his, that in a case involving the accounts of an officer under such a statute any doubts are to be resolved in favor of the officer; and by a line of authority in the Supreme Court of the United States, followed frequently and numerously in the circuit courts and in the Supreme Court of the United States, we have a long line of authority that where a statute is in the least degree open to construction, and in many cases, Mr. President, where it has not been open to construction a long-continued construction of it by the executive officers of the Government has been held to be cogent, to be persuasive, to be decisive.

I had not expected to go into the presentation of that line of authority on this particular question—the question as to whether or no you would admit debates in Congress. Those debates, Mr. President, under the principle which I have now ventured to enunciate—and I do not suppose it will be disputed—go to the point that if the Congress itself in the debates placed a different construction upon this act from what the learned managers place upon it, there could be no crime in this respondent in placing a like construction upon it; that what here was said, and in another body in debate, as to what was the understanding of Congress as to the meaning of this act when Congress was in the process of enacting it, and again and again in repeated years on appropriation bills in identical terms this same statute has been brought up again and again in debate, that what was said there and then by Members of Congress as to the received construction of this act, totally different from that of the honorable managers, goes to show that this could not have been a statute that was not open to a difference of construction and opinion.

Now, clearly to go into that and trace it to its roots it would be necessary for me here and now to take up the analysis——

Mr. HALE. Mr. President——

The PRESIDING OFFICER. Will the counsel suspend for a moment?

Mr. HIGGINS. Certainly.

Mr. HALE. Is there any question before the Senate sitting as a court of impeachment; and if so, what is the question?

The PRESIDING OFFICER. Counsel for respondent offer to introduce in evidence certain extracts from the CONGRESSIONAL RECORD, showing debates in Congress and action of the two Houses of Congress at the time of the passage of the enactment which allows judges to receive their reasonable expenses for attending court out of their districts. They offer it for the

purpose of showing the history of the enactment, and also for the purpose of throwing light upon what is the true construction of the act. To this the managers on the part of the House object, and the question is now being argued by counsel for the respondent.

Mr. HALE. It is a very plain and clear question. Has the Chair ruled upon it?

The PRESIDING OFFICER. The Presiding Officer has not, he is listening to argument on the part of counsel.

Mr. HALE. Is it proposed that further time of the Senate shall be taken by argument upon this matter?

The PRESIDING OFFICER. The Presiding Officer does not feel that he is at liberty to limit the argument of counsel in this respect, or of the managers.

Mr. HALE. Then the Senate is at the mercy of the counsel for the respondent?

Mr. HIGGINS. I was about to reach a point where I think I would have demonstrated to the distinguished Senator from Maine that I am merciful, for I was going to make a suggestion, which I would have reached in a moment, and I come to it now. I did not have the opportunity of bringing this to the attention of my colleague before we came together here at this trial table to-day.

We offer to the learned managers that all this evidence shall be permitted to go in at this time for what it is considered to be worth by the Senate after argument in, and thus to save the time of the Senate in this preliminary discussion of the admissibility of evidence, and let it come in the final argument.

The reason for that suggestion, which I think should commend itself to the Senate, is this: This is a case of a trial before judges. It is not the case of a trial before a jury. It is where the evidence can go to the court, and it is the familiar knowledge of every practicing lawyer that there is no objection to allowing anything in the nature of evidence to go to the court, to be considered by it as to what worth it shall bear in the end.

That suggestion would include not only these excerpts from Congressional debates, but also the certificates of the Treasury Department of the accounts of the circuit and district judges of the United States, from the fiscal year 1895 to the fiscal year 1903, not including the justices of the Supreme Court, but being certificates identical in their make-up and character to those that have already been put in evidence by the learned managers, of the accounts of Judge Swayne, in support of their first three articles.

The question I was discussing bears upon those certificates with more force, much more, than it will upon the admissibility of these debates. That is a question which stands by itself, and has peculiar reasons for and against it. But if the learned managers will accept the offer, we can close the case, and allow the matter to go to argument. I hope that course will be taken.

Mr. Manager OLMSTED. Mr. President, when these other matters are offered we will determine whether we have objection to them. We have already objected to this, and I want to add simply a word. The long line of authorities which the counsel has cited seems to resolve itself down to the case of Johnson against somebody——

Mr. HIGGINS. The United States is the somebody.

Mr. Manager OLMSTED. In which the recitals in a joint resolution were accepted as evidence, in accordance with the well-known principle of law that the recital in the preamble of a public act of Parliament of a fact is evidence to prove the existence of the fact, not the debates in the House or in the Senate when the joint resolution was passed, but the joint resolution itself. That is the English and American doctrine.

I will simply add one more authority, and rest. In the case of the United States against the Union Pacific Railroad (91 U. S., 72), Mr. Justice Davis, delivering the opinion of the court, said, on page 79:

> In construing an act of Congress we are not at liberty to recur to the views of individual members in debate nor to consider the motives which influenced them to vote for or against its passage. The act itself speaks the will of Congress, and this is to be ascertained from the language used.

The PRESIDING OFFICER. The Presiding Officer will submit this question to the Senate: Counsel for the respondent propose to offer certain extracts from the CONGRESSIONAL RECORD, including debates in the House and Senate, votes in the House and Senate, for the purpose, as stated, of showing the history of the enactment by which the United States judges holding court out of their districts are entitled to expenses and as throwing light upon the true construction of the act. [Putting the question.] In the opinion of the Presiding Officer the noes have it.

Mr. SPOONER. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary called the roll.

The PRESIDING OFFICER. The Presiding Officer desires to know whether there is any objection to his voting. [A pause.] The Presiding Officer votes "yea."

There were on the roll call—yeas 34, nays 33, as follows:

YEAS—34.

Alger	Cullom	Heyburn	Proctor
Allee	Dietrich	Kearns	Quarles
Allison	Dillingham	Long	Scott
Bailey	Dolliver	McComas	Smoot
Ball	Fairbanks	McEnery	Spooner
Beveridge	Frye	Millard	Warren
Carmack	Fulton	Overman	Wetmore
Clapp	Gallinger	Platt, Conn.	
Crane	Gamble	Platt, N. Y.	

NAYS—33.

Bacon	Foraker	McCreary	Patterson
Bate	Foster, La.	McCumber	Simmons
Berry	Gibson	McLaurin	Stewart
Blackburn	Gorman	Mallory	Stone
Burnham	Hale	Martin	Taliaferro
Burrows	Kean	Money	Teller
Clay	Kittredge	Morgan	
Culberson	Latimer	Nelson	
Daniel	Lodge	Newlands	

NOT VOTING—18.

Ankeny	Cockrell	Elkins	Penrose
Bard	Depew	Foster, Wash.	Perkins
Clark, Mont.	Dick	Hansbrough	Pettus
Clark, Wyo.	Dryden	Hopkins	
Clarke, Ark.	Dubois	Knox	

The PRESIDING OFFICER. On the question of the admission of the evidence offered, the yeas are 34 and the nays 33. The evidence is admitted.

Mr. THURSTON. Mr. President, I have already made my offer, and I will ask that the reading of the extracts may be waived and that they may be printed in the RECORD.

The PRESIDING OFFICER. If there is no objection, that course will be pursued.

The papers referred to are as follows:

[CONGRESSIONAL RECORD, Vol. 28, Part 5, Fifty-fourth Cong., first sess., April 24, 1896, page 4363.]

Mr. ALLEN. Mr. President, I desire to call the attention of the Senator from Iowa to a fact which came to my knowledge the other day, and it is to the effect that under this law, or laws similar to this which have been passed, where Congress allows compensation to judges who hold courts outside of their particular districts, and especially the United States appellate judges, that in all instances they certify to $10 a day, regardless of the actual expenses to which they are put. The evident policy of the law was to cover the actual expenses of the judges at hotels and for traveling expenses not to exceed $10 per day.

I have information from a source that I am not permitted to disclose that in many instances where the legitimate expenses and hotel bills are not to exceed three or four dollars a day, where a judge has gone to a city and stayed there perhaps for a month or two months——

Mr. WOLCOTT. We can not hear the Senator.

Mr. ALLEN. In cases where the judge has gone to a place where the court is to be held, and has no expense except the mere expense of hotel bills, remaining there for a month, or, possibly, all winter in some cases, or for several months at least, uniformly he certifies to $10 a day, which is the full maximum allowed by the law. I call the attention of the Senator from Iowa to this fact, so that this bill may be amended and the law not be abused by the very officer whose duty it is, above all others, to see that the law is observed. This bill provides:

"That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges."

There is a maximum fixed. There may be days when $10 would be required to cover the expenses of the judge, and it would be perfectly proper for him to draw that sum and certify to it; but I submit that it is improper and in violation of the spirit, if not of the language, of the statute that the judge, simply because he has the power to certify, will be enabled to take from the Treasury of the United States $10 for every day to cover his expenses, when his actual expenses do not exceed four or five dollars a day.

It may be a small item; probably it is a small item, but it is not small in so far as it develops a disposition upon the part of high judicial officers of the country to violate the spirit of a law which they themselves are engaged in enforcing against criminals and other violators of the law.

* * * * * * *

Mr. ALLEN. I mean to assert, according to my information, and I look upon it as reliable, and I think inquiry at the Department of Justice would disclose the fact, that there are Federal judges in the United States—there is where they belong—who uniformly certify to $10. They take the maximum under a certificate covering their expenses.

Mr. GRAY. Do I understand the Senator to say that all the judges certify to $10 a day?

Mr. ALLEN. Not all. I do not say all. But I say that there are judges who do it—district judges holding, for instance, courts of appeal. Some of them do certify uniformly to $10 a day and take $10 a day out of the Government in cases where their legitimate expenses are not, and in the nature of things can not be, to exceed three or four dollars a day.

* * * * * * *

Mr. ALLISON. The Senator from Nebraska will observe that the only object of this provision is to place the district judges upon an equality with circuit judges as respects their expenses.

Mr. ALLEN. Yes, sir; I observe that they are put upon an equality. What I am contending for, and what I hope the honorable Senator from Iowa will remedy, is that these men shall not be permitted to violate the law themselves.

Mr. ALLISON. Does the Senator believe that any district judge or circuit judge is likely to violate the law by making a false certificate?

The Senator must remember that this includes all traveling expenses, as well as expenses while at the place of holding court.

Mr. ALLEN. I hope the Senator from Iowa will not put me in the attitude of making the charge that all Federal judges violate the law, for I do not make it.

Mr. ALLISON. I certainly would not put the Senator in any such attitude.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixed the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive $10 a day unless his actual expenses amount to $10 a day.

* * * * * * *

[Page 4364.]

Mr. ALLEN. I suggest to the Senator from Iowa the propriety of inserting, after the word "judges," in line 21, on page 111, the words:

"Which said certificate shall in all cases contain a statement that the expenses therein certified have actually been incurred or paid."

* * * * * * *

I move, then, to insert, after the word "judges," in line 21, page 111, the words:

"Which said certificate shall state in all cases that the judge had actually incurred or paid the expense therein stated."

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Nebraska to the amendment of the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

[CONGRESSIONAL RECORD, vol. 28, part 6, Fifty-fourth Cong., first sess., May 19, 1896, page 5391.]

Amendment No. 177: That the House recede from its disagreement to the amendment of the Senate No. 177, and agree to the same with an amendment, as follows: In lieu of the matter inserted by said amendment insert the following: ", and such payments shall be allowed the marshal in the settlement of his accounts with the United States;" and the Senate agree to the same.

[May 21, 1896, page 5510.]

The PRESIDING OFFICER. The question is on concurring in the report of the conference committee.

The report was concurred in.

[CONGRESSIONAL RECORD, volume 31, part 3, Fifty-fifth Congress, second session. February 28, 1898, page 2283.]

Mr. UNDERWOOD. Now, this section in the bill very materially changes the provisions of section 715 of the Revised Statutes. In the first place, it provides a compensation of $10 a day to the district judges during the time they are traveling from their homes to the places where they hold extra courts. The statute already gives them $10 a day compensation during the time they are holding courts, but this gives them an additional compensation of $10 a day while traveling back and forth. Now, these judges receive $5,000 a year salary from the United States, and the law provides for their being paid mileage and traveling expenses, so that I see no reason why their compensation or salary should be increased in this way.

* * * * * * *

Mr. CANNON. My friend from Alabama is after the $10 a day to cover the expenses of traveling and attendance of the district judges when attending district courts——

Mr. UNDERWOOD. As I understand, the judge gets $10 a day after he gets to the place where he is going to hold the court.

Mr. CANNON. Not the district judge, but the circuit judges.

Mr. UNDERWOOD. When a new district judge is sent to hold court when another judge is sick he gets, under the law, $10 a day.

Mr. CANNON. I do not so understand it. Let me give my understanding, so as to get the exact difference between us. I understand the district judge gets his $5,000 a year, if that is it——

Mr. UNDERWOOD. Yes.

Mr. CANNON. When he goes outside to hold court he does not get anything.

Mr. UNDERWOOD. My friend from Illinois, I think, is mistaken. When he goes to attend court he gets $10 a day compensation for holding that court during the days he is there, and I think that is sufficient, for he already gets $5,000 a year, and to pay him $10 per day while at court will more than cover his expenses, and it is sufficient compensation without giving him the additional amount in this bill.

* * * * * * *

Mr. CANNON. I understand when the circuit court is held away from the residence of one of the circuit judges—I mean the appellate court—they get $10 a day.

Mr. UNDERWOOD. I do not so understand it if it is within the circuit of the judge.

Mr. CANNON. Yes; if it is away from the place of his residence. The truth is, if there is any abuse it is as to the judges that perform appellate duty. Two of them always are away from their homes. They get their full salary and then $10 a day besides, whereas, it seems to me, there is no abuse as to the district judge, because he only goes away on special occasions and ought to have $10 a day.

Mr. UNDERWOOD. My friend and I do not agree. I insist that the law is that when he gets to the court outside of his district that he is going to hold he gets his $10 a day. This proposes to give him $10 a day during the time he is traveling.

Mr. CONNOLLY. This provision in the bill is in precisely the same language as the law stands to-day. There is no change. Here is the law as it was passed by the last Congress:

"*Provided further*, That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court; and of compensation for jury commissioners, $5 per day, not exceeding three days for any one term of court."

Mr. UNDERWOOD. Does the gentleman say that became a law in the last Congress?

Mr. CONNOLLY. That is the law. Let me say the act of March 3, 1891, provided for the creation of the court of appeals and for the payment of an additional circuit judge in each judicial circuit, provided that where the judges attended that court away from their places of residence they should be entitled to compensation, and ever since then the law has made appropriation to carry out the letter of the law creating the circuit court of appeals. I investigated that matter myself at the Department of Justice this morning, and spent an hour there with the officials that have the accounts under their supervision, and I find that the law has been so since the circuit court of appeals was established.

Mr. UNDERWOOD. I looked up the law in the Revised Statutes. I will say candidly that I did not look at the acts of the last Congress, and if the act was passed by the last Congress then I may be in error.

Mr. CONNOLLY. It was enacted before the last Congress, but how long ago I do not remember; I think probably about 1891, the time of the creation of the court of appeals.

Mr. POWERS. If I understand the gentleman from Alabama [Mr. UNDERWOOD] correctly, his criticism applies to this allowance to the district judges when they are called away from their districts to attend court?

Mr. UNDERWOOD. Yes, sir.

Mr. POWERS. For the information of the gentleman, let me say that for more than twenty or twenty-five years this statute has been in force. Many years ago the language of the statute relating to allowances of this kind was that the judges should be allowed their "reasonable expenses."

That wide latitude of language was greatly abused. Sometimes the judges charged as high as $40 a day. For that reason Congress cut down the allowance to $10 a day and made it apply in terms both to travel and to attendance upon court. The object of the allowance was to indemnify the judges for their expenses in leaving home, and included, of course, expenses of transportation as well as expenses while attending court. Our district judge in the State of Vermont does more work probably in the city of New York than he does in our State. When he leaves home for the purpose of holding court in New York he is allowed $10 a day from the time when he leaves until he returns, the allowance of $10 covering his transportation expenses and his expenses while in New York. As the gentleman will readily see, the allowance is not a very liberal one.

[Page 2284.]

Mr. UNDERWOOD. As I understand, the law at present does not apply to the time taken up by the judge in traveling from his home to the place where he is going to hold court.

Mr. POWERS. Oh, yes it does. The language of the act is "expenses for travel and attendance, not to exceed $10 per day;" that is, $10 per day for traveling, or $10 per day while in attendance at court.

Mr. UNDERWOOD. I understand that such is the provision of this bill, but I do not understand that it is the existing law.

Mr. POWERS. It has been the law in this same form for a great many years.

Mr. UNDERWOOD. The gentleman from Illinois [Mr. CONNOLLY] and the gentleman from Vermont [Mr. POWERS] insist that this provision is now existing law as passed by the last Congress. I therefore wish to ask the gentleman from Illinois [Mr. CANNON] why the provision has been incorporated in this bill at this time?

Mr. CANNON. I will tell the gentleman exactly how I understand this matter, and I want to be entirely frank with him and the Committee of the Whole.

Ten dollars a day is the allowance now for travel and expenses to the circuit judges. When one of these judges does appellate duty away from home, he certifies his account for expenses upon the basis of $10 a day. And that is right enough. When a circuit judge of Indiana or the southern district of Illinois goes to Chicago for the purpose of holding court (and there is work enough there for three judges), all he has to do is to certify his account for expenses at the rate of $10 a day, and upon his certificate the allowance is made. But this provision of the existing law does not apply to a district judge. He must make out a detailed account of his expenses. If, for instance, he pays 10 cents for blacking his boots, or if he buys a breakfast at a restaurant for 50 cents or a dollar, he must include such items in the detailed statement of his expenses.

That statement is sent down here and must pass the approval of the accounting officers of the Treasury, who must decide as best they can whether the charges are reasonable. Now, the provision of this bill, as we have reported it, will allow these district judges $10 a day upon their certificates in the same way that the circuit judges get their allowances (which we can not prevent them from getting) at the rate of $10 per day. If this provision goes out of the bill, these district judges must continue to render an account of expenses in detail. That is the state of the case as I understand it, and I think I understand all there is in it.

Mr. SHAFROTH. And the effect of allowing these judges $10 a day will be to save money to the Treasury.

Mr. CANNON. In effect it does that. Because when one of these judges is away from home, holding court in Chicago or New York City or Dallas or anywhere else outside of his district, an allowance of $10 a day for expenses is not extravagant.

* * * * * * *

Mr. UNDERWOOD. The first provision does not limit this payment to the judges of $10 a day to the time they are actually holding court. Now, if the gentleman from Illinois will amend that part of the provision so that it shall apply to the judges, so that it shall only pay them $10 a day on the days they are actually holding court, I will withdraw the point of order.

Mr. CANNON. Well, I think it ought to so apply. I think the accounting officers would so construe it; but I have no objection to its going in, if the gentleman desires.

* * * * * * *

Mr. DOCKERY. Let me suggest to the gentleman from Alabama, and the gentleman from Illinois, to insert, in line 14, page 104, after the word "each," the words:

"Not to exceed $10 per day each, during the time the court is in actual session."

Mr. CONNOLLY. That would exclude traveling expenses.

Mr. SULLIVAN. You might make it so much per diem only when they are in actual attendance on the courts.

Mr. CANNON. I think the act as we have got it accomplishes what the gentleman wants.